109-162

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~248.~~ 36

ANNIE LOUIS, PLAINTIFF IN ERROR,

vs.

THE TRUSTEES OF BROWN TOWNSHIP, DELAWARE COUNTY, OHIO.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF OHIO.

FILED AUGUST 4, 1880.

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1 Pleas in the circuit court of the United States for the western division of the northern district of Ohio, held at the United States court-rooms, in the city of Toledo, in the division and district aforesaid, before the honorable Martin Welker, district judge, on Tuesday, June 1st, in the year of our Lord one thousand eight hundred and eighty, and of our Independence the one hundredth and fourth.

AUGUSTUS J. RICKS, *Clerk.*

Be it remembered that on the 19th day of June, A. D. 1879, came the plaintiff by William H. Pugh and Hoadly, Johnson and Colston, her attorneys, and filed in the office of the clerk of the circuit court, at Toledo, in the district aforesaid, her petition, which is in the words and figures following, to wit:

2 *Petition.*

In the circuit court of the United States for the sixth circuit and northern district of Ohio, western division.

ANNA LOUIS, AN ALIEN, CITIZEN OF THE UNITED Kingdom of Great Britain and Ireland, plaintiff,
vs.
THE TRUSTEES OF BROWN TOWNSHIP, DELAWARE County, citizens of the State of Ohio, defendants. } Petition.

The plaintiff says that she is a citizen and resident of the United Kingdom of Great Britain and Ireland, and that the defendants, The Trustees of Brown Township, Delaware County, Ohio, were at the several times hereinafter mentioned and still are a body politic and corporate, created by and existing under the laws of said State, and wholly composed of citizens of said State within the western division of the northern district of Ohio.

3 And for a first cause of action the plaintiff says that on the 20th day of April, 1853, the defendants being thereunto duly authorized by an act of the general assembly of the State of Ohio, entitled "An act to incorporate the Springfield and Mansfield Railroad Company," and passed March 21st, 1850, and an act entitled "An act regulating the mode of proceeding where county commissioners may be authorized by law to subscribe to the capital stock of railroads, turnpike roads, or other incorporated companies in this State," and passed February 28th, 1846, and act entitled "An act to authorize special elections to decide the question of subscription to the Springfield and Mansfield Railroad, by counties and townships," and passed March 25th, 1851, did execute and deliver to the Springfield, Mount Vernon and Pittsburgh Railroad Company, being the same corporation mentioned in said acts of the general assembly as the Springfield and Mansfield Railroad Company, the name of said company having been so changed in accordance with law, a certain promissory note for the sum of one thousand dollars, in the words and figures following, to wit:

3720——1

No.5.] UNITED STATES OF AMERICA, STATE OF OHIO. [$1,000.

Township of Brown, in Delaware County, seven per cent. loan.

4 Be it known that the Township of Brown, in Delaware County, in the State of Ohio, owes to the Springfield, Mt. Vernon and Pittsburgh Railroad Company one thousand dollars, which sum the said township of Brown promises to pay to the said Springfield, Mt. Vernon and Pittsburgh Railroad Company, or its assigns, at the office of the treasurer of said township, on the first day of October, A. D. 1871, and to pay the interest thereon at the rate of seven per cent. per annum semi-annually, the first payment to be made on the first day of January, 1853, and on each first day of January and July thereafter, the said Township of Brown, however, reserving to the said township the right to pay the amount hereby secured to be paid at any time after the first day of October, A. D. 1860, at their option, they giving notice of the said day of payment at least six months previous thereto, by advertisement published not less than four consecutive weeks in a newspaper published in the county of Delaware aforesaid, and after the day of payment so advertised the interest thereon shall cease. This obligation is issued in part payment of a subscription of three hundred and forty shares of fifty dollars each to the capital stock of said Springfield, Mt. Vernon and Pittsburgh Railroad Company, made by the said Township of Brown in pursuance of
5 the provisions of several acts of the general assembly of the State of Ohio, and of a vote of the qualified electors of said township of Brown taken in pursuance thereof.

In testimony whereof the Trustees of Brown Township aforesaid have hereunto set their hands and seals this 20th day of April, A. D. 1853.

JOSEPH C. PORTER,
SAMUEL S. OLIVER,
JOHN P. BLACK,
Trustees of Brown Township.

Attest:
JASON MERRIHEW, *Township Clerk.*

Plaintiff further says that at the time said note was executed and delivered as aforesaid said Porter, Oliver, and Black were the duly elected and qualified trustees of said Brown Township, and said Merrihew was the duly elected and qualified township clerk. Plaintiff says that there were attached to said note interest warrants or coupons numbered consecutively from 1 to 38, inclusive, for the semi-annual payment of interest each six months from January 1st, 1854, to July 1st, 1871, inclusive, each of said interest warrants being in the form following, to wit, and the others varying only in the number of the warrant and time of maturity:

6 DELAWARE COUNTY, OHIO:

Brown Township interest warrant No. 14, for thirty-five dollars, being for six months' interest on bond No. 5, payable on the 1st day of January, 1854, at the office of the treasurer of said township.

$35.00.] J. MERRIHEW, *Tp. Clerk.*

That said note was delivered to said railroad company with all the said

coupons attached thereto in part payment for a subscription of seventeen thousand dollars to the capital stock of said railroad company made by said Trustees of Brown Township in pursuance to a vote of the qualified electors of said township.

Plaintiff further says that said trustees levied and collected a tax upon the taxable property in said township, and paid the interest coupons on said note from the first day of January, 1854, up to and inclusive of the first day of January, 1859, being in all eleven semi-annual payments of interest on said bond.

Plaintiff further says that she is the owner and holder of said note, and of the coupons for the annual payment of interest thereon from July 1st, 1859, to January 1st, 1871, inclusive, which said coupons are now, and always have been, attached to said note.

7 Plaintiff says that after the execution and delivery of said note to said railway company as aforesaid, and in the year 1854, the said railroad company did endorse and deliver said note and the coupons thereto attached to Brown, Collins and Brown, and that said Brown, Collins and Brown afterwards endorsed and delivered said note and coupons to Richard B. Hopple, and Richard B. Hopple afterwards endorsed and delivered said note and coupons to the plaintiff, who now holds and owns the same.

The following is a true copy of said endorsements:

The Springfield, Mount Vernon and Pittsburgh Railroad Company for a valuable consideration hereby assigns the within bond to Brown, Collins and Brown, or assigns, and for value received as aforesaid hereby guarantees the final payment of this bond, principal and interest, on or before the first day of November, 1871.

By order of the directors of said company.

C. ANTHONY, *President.*

JULY 7TH, 1853.

For value received, I assign the within bond and all benefit of the above guarantee to R. B. Hopple.

BROWN, COLLINS AND BROWN.

For value received, I assign the within bond and all benefit of the above guarantee to Annie Louis.

R. B. HOPPLE.

8 And the plaintiff further states that said note was purchased by said Brown, Collins and Brown and by said Hopple in good faith, for valuable consideration, before maturity of any of the coupons thereon now remaining unpaid, and that neither said railroad company, nor said Brown, Collins and Brown, nor said Hopple had any notice of defences to said note, if any there be, at the respective times of said endorsements to them.

Plaintiff further says, that after the passage of said act of March 21st, 1850, at the next annual election held in the several townships of said county of Delaware more than twenty days after the passage of said act, the county commissioners of said Delaware County were not authorized by the vote of said county to subscribe to the stock of said railroad company.

Plaintiff further says that since January, 1859, no interest has been paid on said note, and that said note has become due and payable, but that the defendants, though often requested, have neglected and refused to pay said note or the several instalments of interest accrued since January, 1859, and that there is due the plaintiff thereon from the defendants the sum of one thousand dollars, with seven per cent. interest per annum from October 1st, 1871, and twenty-five instalments of semi-annual interest thereon as specified in said coupons thereto attached, and being a part thereof, of thirty-five dollars each, with interest on said instalments at six per cent. per annum from their respective maturities, to wit, July 1st, 1859, and January and July 1st, in each of the years 1860, 1861, 1862, 1863, 1864, 1865, 1866, 1867, 1868, 1869, 1870 & 1871.

2. And for a second cause of action the plaintiff says that, on the 20th day of April, 1853, the defendants being thereunto duly authorized by an act of the general assembly of the State of Ohio entitled "An act to incorporate the Springfield and Mansfield Railroad Company," and passed March 21st, 1850, and an act entitled "An act regulating the mode of proceeding where county commissioners may be authorized by law to subscribe to the capital stock of railroads, turnpike roads, or other incorporated companies in this State", and passed February 28th, 1846, and an act entitled "An act to authorize special elections to decide the question of subscription to the Springfield and Mansfield Railroad by counties and townships," and passed March 25th, 1851, did execute and deliver to the Springfield, Mt. Vernon, and Pittsburgh Railroad Company, being the same corporation mentioned in said acts of the general assembly as the Springfield and Mansfield Railroad Company, the name of said company having been so changed in accordance with law, a certain bond for the sum of one thousand dollars, called a promissory note, in the words and figures following, to wit:

No. 7.] UNITED STATES OF AMERICA, STATE OF OHIO. [$1,000.00

Township of Brown, in Delaware County, seven per cent. loan.

Be it known, that the Township of Brown, in Delaware County, in the State of Ohio, owes to the Springfield, Mt. Vernon and Pittsburgh Railroad Company one thousand dollars, which sum the said Township of Brown promises to pay to the said Springfield, Mt. Vernon and Pittsburgh Railroad Company, or its assigns, at the office of the treasurer of said township on the first day of October, A. D. 1871, and to pay the interest thereon at the rate of seven per cent. per annum semi-annually, the first payment to be made on the first day of January, 1853, and on each first day of January and July thereafter; the said Township of Brown, however, reserving to the said township the right to pay the amount hereby secured to be paid at any time after the first day of October, A. D. 1860, at their option; they giving notice of the said day of payment at least six months previous thereto, by advertisement published not less than four consecutive weeks in a newspaper published in the county of Delaware aforesaid, and after the day of payment so advertised, the interest thereon shall cease. This obligation is issued in part payment of a subscription of three hundred and forty shares of fifty dollars each to the capital stock of the said Springfield, Mt. Vernon and Pittsburgh Rail-

road Company, made by the said Township of Brown in pursuance of the provisions of several acts of the general assembly of the State of Ohio, and of a vote of the qualified electors of said township of Brown taken in pursuance thereof.

In testimony whereof the Trustees of Brown Township aforesaid have hereunto set their hands and seals this 20th day of April, A. D. 1853.

JOSEPH C. PORTER,
SAMUEL S. OLIVER,
JOHN P. BLACK,
Trustees of Brown Township.

Attest:
JASON MERRIHEW, *Township Clerk.*

Plaintiff further says that at the time said bond was executed and delivered as aforesaid, said Porter, Oliver, and Black were the duly elected and qualified trustees of said Brown Township, and said Merrihew was the duly elected and qualified township clerk. Plaintiff says that there were attached to said bond interest warrants or coupons numbered, consecutively,

12 from one to thirty-eight, inclusive, for the semi-annual payment of interest each six months from January 1st, 1854, to July 1st, 1871, inclusive; each of said interest warrants being for the sum of 35 dollars, one being in the form following, to wit, and the others varying only in the number of the warrant and time of maturity.

DELAWARE COUNTY, OHIO:

Brown Township, interest warrant No. 14, for thirty-five dollars, being for six months' interest on bond No. 7, payable on the first day of January, 1854, at the office of the treasurer of said township.

$35.00] J. MERRIHEW, *T'p Clerk.*

That said bond was delivered to said railroad company, with all the said coupons attached thereto, in part payment for a subscription of seventeen thousand dollars to the capitol stock of said railroad company, made by said Trustees of Brown Township in pursuance to a vote of the qualified electors of said township.

Plaintiff further says that said trustees levied and collected a tax upon the taxable property in said township, and paid the interest coupons on said bond from the first day of January, 1854, up to and inclusive of the first day of January, 1859, being in all eleven semi-annual payments of interest on said bond.

13 Plaintiff further says that she is the owner and holder of said bond, and of the coupons for the annual payment of interest thereon from July 1st, 1859, to January 1st, 1871, inclusive, which said coupons are now and always have been attached to said bond.

Plaintiff says that after the execution and delivery of said bond to said railway company as aforesaid, and in the year 1854 the said railroad company did endorse and deliver said bond and the coupons thereto attached to Brown, Collins and Brown, and that said Brown, Collins and Brown afterwards endorsed and delivered said bond and coupons to Richard B. Hopple, and Richard B. Hopple afterwards endorsed and delivered said bond and coupons to the said plaintiff, who now holds and owns the same.

The following is a true copy of said endorsements:

The Springfield, Mount Vernon, and Pittsburgh Railroad Company, for a valuable consideration, hereby assigns the within bond to Brown, Collins and Brown, or assigns, and for value received as aforesaid, hereby guarantees the final payment of this bond, principal and interest, on or before the first day of November, 1871.

By order of the directors of said company.

C. ANTHONY,
President.

JULY 7TH, 1853.

For value received I assign the within bond and all benefit of the above guarantee to R. B. Hopple.

BROWN, COLLINS AND BROWN.

14 For value received I assign the within bond and all benefit of the above guarantee to Annie Louis.

R. B. HOPPLE.

And the plaintiff further states that said bond was purchased by said Brown, Collins and Brown, and by said Hopple, in good faith, for valuable consideration, before maturity of any of the coupons thereon now remaining unpaid, and that neither said railroad company nor said Brown, Collins and Brown, nor said Hopple had any notice to defences of said bond, if any there be, at the respective times of said endorsements to them.

Plaintiff further says that after the passage of said act of March 21st, 1850, at the next annual election held in the several townships of said county of Delaware, more than twenty days after the passage of said act, the county commissioners of said Delaware County were not authorized by the vote of said county to subscribe to the stock of said railroad company.

Plaintiff further says that since January, 1859, no interest has been paid on said bond, and that said bond has become due and payable, but that the defendants, though often requested, have neglected and refused to
15 pay said bond or the several instalments of interest accrued since January, 1859, and that there is due the plaintiff thereon from the defendants the sum of one thousand dollars, with seven per cent. per annum interest from October 1st, 1871, and twenty-five instalments of semi-annual interest thereon as specified in said coupons thereto attached, and being a part thereof, of thirty-five dollars each, with interest on said instalments at six per cent. per annum from their respective maturities, to wit, July 1st, 1859, and January and July 1st, in each of the years 1860, 1861, 1862, 1863, 1864, 1865, 1866, 1867, 1868, 1869, 1870, and 1871.

3. And for a third cause of action, the plaintiff says that on the 20th day of April, 1853, the defendants being thereunto duly authorized by an act of the general assembly of the State of Ohio, entitled "An act to incorporate the Springfield and Mansfield Railroad Company," and passed March 21st, 1850; and an act entitled "An act regulating the mode of proceeding where county commissioners may be authorized by law to subscribe to the capital stock of railroads, turnpike roads, or other incorporated companies in this State," and passed February 28th, 1846; and an act entitled "An act to authorize special elections to decide the question of subscription to the Springfield and Mansfield Railroad, by counties and townships,"
16 and passed March 25th, 1851; did execute and deliver to the Spring-

field, Mt. Vernon and Pittsburg Railroad Company, being the same corporation mentioned in said acts of the general assembly as the Springfield and Mansfield Railroad Company, the name of said company having been so changed in accordance with law, a certain promissory note called a bond, but not under seal, for the sum of one thousand dollars, in the words and figures following, to wit:

No. 8.] UNITED STATES OF AMERICA, STATE OF OHIO. [$1,000.00.

Township of Brown, in Delaware County, seven per cent. loan.

Be it known that the Township of Brown, in Delaware County, in the State of Ohio, owes to the Springfield, Mt. Vernon and Pittsburgh Railroad Company, one thousand dollars, which sum the said Township of Brown promises to pay to the said Springfield, Mt. Vernon and Pittsburgh Railroad Company or its assigns, at the office of the treasurer of said township, on the first day of October, A. D. 1871, and to pay the interest thereon at the rate of seven per cent. per annum, semi-annually, the first payment to be made on the first day of January, 1853, and on each first day of January and July thereafter, the said Township of Brown, however, re-
17 serving to the said township the right to pay the amount hereby secured to be paid, at any time after the first day of October, A. D. 1860, at their option, they giving notice of the said day of payment at least six months previous thereto, by advertisement published not less than four consecutive weeks, in a newspaper published in the county of Delaware aforesaid, and after the day of payment so advertised, the interest thereon shall cease. This obligation is issued in part payment of a subscription of three hundred and forty shares of fifty dollars each, to the capital stock of the said Springfield, Mt. Vernon and Pittsburgh Railroad Company, made by the said Township of Brown, in pursuance of the provisions of several acts of the general assembly of the State of Ohio, and of a vote of the qualified electors of said Township of Brown, taken in pursuance thereof.

In testimony whereof the Trustees of Brown Township aforesaid, have hereunto set their hands and seals this 20th day of April, A. D. 1853.

JOSEPH C. PORTER,
SAMUEL S. OLIVER,
JOHN P. BLACK,
Trustees of Brown Township.

Attest:
JASON MERRIHEW, *Township Clerk.*

18 Plaintiff further says that at the time said bond was executed and delivered as aforesaid, said Porter, Oliver, and Black, were the duly elected and qualified trustees of said Brown Township, and said Merrihew was the duly elected and qualified township clerk.

Plaintiff says that there were attached to said bond, interest warrants or coupons, numbered consecutively from 1 to 38, inclusive, for the semi-annual payment of interest each six months from January 1st, 1854, to July 1st, 1871, inclusive, each of said interest warrants being for the sum of thirty-five dollars, one being in the form following, to wit, and the others varying only in the number of the warrant and time of maturity.

DELAWARE COUNTY, OHIO:

Brown Township interest warrant, No. 14, for thirty-five dollars, being for six month's interest on bond No. 8, payable on the 1st day of January, 1854, at the office of the treasurer of said township.

$35.00.] J. MERRIHEW, *T'p Clerk.*

That said bond was delivered to said railroad company, with all the said coupons attached thereto, in part payment for a subscription of seventeen thousand dollars to the capital stock of said railroad company, made by said Trustees of Brown Township, in pursuance to a vote of the qualified
19 electors of said township.

Plaintiff further says that said trustees levied and collected a tax upon the taxable property in said township, and paid the interest coupons on said bonds from the first day of January, 1854, up to and inclusive of the first day of January, 1859, being in all eleven semi-annual payments of interest on said bond.

Plaintiff further says that she is the owner and holder of said bond and of the coupons for the annual payment of interest thereon from July 1st, 1859, to January 1st, 1871, inclusive, which said coupons are now and always have been attached to said bond.

Plaintiff says that after the execution and delivery of said bond to said railroad company as aforesaid, and in the year 1854, the said railroad company did endorse and deliver said bond and the coupons thereto attached to Brown, Collins and Brown, & that said Brown, Collins & Brown afterwards endorsed and delivered said bond and coupons to Richard B. Hopple, and Richard B. Hopple afterwards endorsed and delivered said bond and coupons to the plaintiff, who now holds and owns the same.

The following is a true copy of said endorsements:

The Springfield, Mount Vernon and Pittsburgh Railroad Company, for a valuable consideration, hereby assigns the within bond to
20 Brown, Collins and Brown, or assigns, and for value received as aforesaid hereby guarantees the final payment of this bond, principal and interest, on or before the first day of November, 1871. By order of the directors of said company.

C. ANTHONY, *President.*

JULY, 7*th*, 1853.

For value received I assign the within bond and all benefit of the above guarantee to R. B. Hopple.

BROWN, COLLINS AND BROWN.

For value received I assign the within bond and all benefit of the above guarantee to Annie Louis.

R. B. HOPPLE.

And the plaintiff further states that said bond was purchased by said Brown, Collins and Brown, and by said Hopple, in good faith for valuable consideration, before maturity of any of the coupons thereon now remaining unpaid, and that neither said railroad company, nor said Brown, Collins and Brown, nor said Hopple had any notice of defences to said bond, if any there be, at the respective times of said endorsements to them.

Plaintiff further says that after the passage of said act of March 21st, 1850, at the next annual election held in the several townships of said county of Delaware, more than twenty days after the passage of
21 said act, the county commissioners of said Delaware County were not authorized by the vote of said county to subscribe to the stock of the said railroad company.

Plaintiff further says that since January, 1859, no interest has been paid on said bond, and that said bond has become due and payable, but that the defendants, though often requested, have neglected and refused to pay said bond, or the several instalments of interest accrued since January, 1859, and that there is due the plaintiff from the defendants the sum of one thousand dollars, with seven per cent. per annum interest from October 1st, 1871, and twenty-five instalments of semi-annual interest thereon, as specified in said coupons thereto attached, and being a part thereof, of thirty-five dollars each, with interest on said instalments at six per cent. per annum from their respective maturities, to wit, July 1st, 1859, and January and July 1st in each of the years 1860, 1861, 1862, 1863, 1864, 1865, 1867, 1868, 1869, 1870, and 1871.

4. And for a fourth cause of action the plaintiff says that on the 20th day of April, 1853, the defendants being thereunto duly authorized by an act of the general assembly of the State of Ohio, entitled "An act to incorporate the Springfield and Mansfield Railroad Company," and passed
22 March 21st, 1850, and an act entitled "An act regulating the mode of proceeding where county commissioners may be authorized by law to subscribe to the capital stock of railroads, turnpike roads, and other incorporated companies in this State," and passed February 28th, 1846, and an act entitled "An act to authorize special elections to decide the question of subscription to the Springfield and Mansfield Railroad by counties and townships," and passed March 25th, 1851, did execute and deliver to the Springfield, Mt. Vernon and Pittsburgh Railroad Company, being the same corporation mentioned in said acts of the general assembly as the Springfield and Mansfield Railroad Company, the name of said company having been so changed in accordance with law, a certain promissory note called a bond, but not under seal, for the sum of one thousand dollars, in the words and figures following, to wit:

No. 10.] UNITED STATES OF AMERICA. STATE OF OHIO. [$1,000.

Township of Brown, in Delaware County, seven per cent. loan.

Be it known that the Township of Brown, in Delaware County, in the State of Ohio, owes to the Springfield, Mt. Vernon and Pittsburgh Railroad Company one thousand dollars, which sum the said Township of Brown promises to pay to the said Springfield, Mt. Vernon and Pittsburgh Railroad Company, or its assigns, at the office of the
23 treasurer of said township, on the first day of October, A. D. 1871, and to pay the interest thereon at the rate of seven per cent. per annum semi-annually, the first payment to be made on the first day of January, 1853, and on each first day of January and July thereafter, the said Township of Brown, however, reserving to the said township the right to pay the amount hereby secured to be paid, at any time after the first day of October, A. D. 1860, at their option, they giving notice of the said

day of payment at least six months previous thereto, by advertisement published not less than four consecutive weeks, in a newspaper published in the county of Delaware aforesaid, and after the day of payment so advertised the interest thereon shall cease. This obligation is issued in part payment of a subscription of three hundred and forty shares of fifty dollars each, to the capital stock of the said Springfield, Mt. Vernon and Pittsburgh Railroad Company, made by the said Township of Brown, in pursuance of the provisions of several acts of the general assembly of the State of Ohio, and of a vote of the qualified electors of said township of Brown taken in pursuance thereof.

In testimony whereof the Trustees of Brown Township aforesaid have hereunto set their hands and seals this 20th day of April, A. D. 1853.

JOSEPH C. PORTER,
SAMUEL S. OLIVER,
24 JOHN P. BLACK,
Trustees of Brown Township.

Attest:
JASON MERRIHEW, *Township Clerk.*

Plaintiff further says that at the time said bond was executed and delivered as aforesaid said Porter, Oliver, and Black were the duly elected and qualified trustees of said Brown Township, and said Merrihew was the duly elected and qualified township clerk. Plaintiff says that there were attached to said bond interest warrants or coupons, numbered consecutively from one to thirty-eight, inclusive, for the semi-annual payment of interest each six months from January 1st, 1854, to July 1st, 1871, inclusive, each of said interest warrants being for the sum of thirty-five dollars, one being in the form following, to wit, the others varying only in the number of the warrant and time of maturity:

DELAWARE COUNTY OHIO:

Brown Township interest warrant No. 14, for thirty-five dollars, being six months' interest on bond No. 10, payable on the first day of January, 1854, at the office of the treasurer of said township.
$35.00.] J. MERRIHEW, *Tp. Clerk.*

That said bond was delivered to said railroad company, with all the said coupons attached thereto, in part payment for a subscription
25 of seventeen thousand dollars to the capital stock of said railroad company, made by said Trustees of Brown Township in pursuance to a vote of the qualified electors of said township.

Plaintiff further says that said trustees levied and collected a tax upon the taxable property in said township, and paid the interest coupons on said bond from the first day of January, 1854, up to and inclusive of the first day of January, 1859, being in all eleven semi-annual payments of interest on said bond.

Plaintiff further says that she is the owner and holder of said bond and of the coupons for the annual payment of interest thereon from July 1st, 1859, to January 1st, 1871, inclusive, which said coupons are now, and always have been, attached to said bond.

Plaintiff says that after the execution and delivery of said bond to said

railway company as aforesaid, and in the year 1854, the said railroad company did endorse and deliver said bond and the coupons thereto attached to Brown, Collins and Brown, and that said Brown, Collins and Brown afterwards endorsed and delivered said bond and coupons to Richard B. Hopple, and Richard B. Hopple afterwards endorsed and delivered said bond and coupons to the plaintiff, who now holds and owns the same.

The following is a true copy of said endorsements:

The Springfield, Mount Vernon and Pittsburgh Railroad Com-
26 pany, for a valuable consideration hereby assigns the within bond to Brown, Collins and Brown, or assigns, and for value received as aforesaid, hereby guarantees the final payment of this bond, principal and interest, on or before the first day of November, 1871.

By order of the directors of said company.

C. ANTHONY, *President.*

JULY 7TH, 1853.

For value received I assign the within bond and all benefit of the above guarantee to R. B. Hopple.

BROWN, COLLINS AND BROWN.

For value received I assign the within bond and all benefit of the above guarantee to Annie Louis.

R. B. HOPPLE.

And the plaintiff further states that said bond was purchased by said Brown, Collins and Brown, and by said Hopple, in good faith for valuable consideration, before maturity of any of the coupons thereon now remaining unpaid, and that neither said railroad company nor said Brown, Collins and Brown, nor said Hopple, had any notice of defences to said bond, if any there be, at the respective times of said endorsements to them.

Plaintiff further says that after the passage of said act of March 21st, 1850, at the next annual election held in the several townships of said county of Delaware, more than twenty days after the passage of said
27 act, the county commissioners of said Delaware County were not authorized by the vote of said county to subscribe to the stock of said railroad company.

Plaintiff further says that since January, 1859, no interest has been paid on said bond, and that said bond has become due and payable, but that the defendants, though often requested, have neglected and refused to pay said bond or the several instalments of interest accrued since January, 1859, and that there is due the plaintiff thereon from the defendants the sum of one thousand dollars, with seven per cent. per annum interest, from October 1st, 1871, and twenty-five instalments of semi-annual interest thereon, as specified in said coupons thereto attached, and being a part thereof of thirty-five dollars each, with interest on said instalments at six per cent. per annum from their respective maturities, to wit, July 1st, 1859, and January and July 1st in each of the years 1860, 1861, 1862, 1863, 1864, 1865, 1866, 1867, 1868, 1869, 1870, & 1871.

5. And for a fifth cause of action the plaintiff says that on the 20th day of April, 1853, the defendants, being thereunto duly authorized by an act of

the general assembly of the State of Ohio, entitled "An act to incorporate the Springfield and Mansfield Railroad Company," and passed March 21st, 1850, and an act entitled "An act regulating the mode of proceed-
28 ing where county commissioners may be authorized by law to subscribe to the capital stock of railroads, turnpike roads, or other incorporated companies in this State," and passed February 28th, 1846, and an act entitled "An act to authorize special elections to decide the question of subscription to the Springfield and Mansfield Railroad by counties and townships," and passed March 25th, 1851, did execute and deliver to the Springfield, Mount Vernon and Pittsburgh Railroad Company, being the same corporation mentioned in said acts of the general assembly as the Springfield and Mansfield Railroad Company, the name of said company having been so changed in accordance with law, a certain promissory note called a bond, but not under seal, for the sum of one thousand dollars, in the words and figures following, to wit:

No. 9.] UNITED STATES OF AMERICA, STATE OF OHIO. [$1,000.

Township of Brown, in Delaware County, seven per cent. loan.

Be it known that the Township of Brown, in Delaware County, in the State of Ohio, owes to the Springfield, Mt. Vernon and Pittsburgh Railroad Company, one thousand dollars, which sum the said Township of Brown, promises to pay to the said Springfield, Mt. Vernon and Pittsbugh Railroad
29 Company, or its assigns, at the office of the treasurer of said township on the first day of October, 1871, and to pay the interest thereon at the rate of seven per cent. per annum semi-annually, the first payment to be made on the first day of January, 1853, and on each first day of January and July thereafter, the said Township of Brown, however, reserving to the said township the right to pay the amount hereby secured to be paid, at any time after the first day of October, A. D. 1860, at their option, they giving notice of the said day of payment at least six months previous thereto by advertisement published not less than four consecutive weeks in a newspaper published in the county of Delaware aforesaid, and after the day of payment so advertised the interest thereon shall cease. This obligation is issued in part payment of a subscription of three hundred and forty shares of fifty dollars each to the capital stock of the said Springfield, Mt. Vernon and Pittsburgh Railroad Company, made by the said Township of Brown in pursuance of the provisions of several acts of the general assembly of the State of Ohio, and of a vote of the qualified electors of said township of Brown taken in pursuance thereof.

In testimony whereof the trustees of Brown Township aforesaid have hereunto set their hands and seals this 20th day of April, A. D. 1853.

30 JOSEPH C. PORTER,
SAMUEL S. OLIVER,
JOHN P. BLACK,
Trustees of Brown Township.

Attest:
JASON MERRIHEW, *Township Clerk.*

Plaintiff further says that at the time said bond was executed and delivered as aforesaid, said Porter, Oliver, and Black were the duly elected and qualified trustees of said Brown Township, and said Merrihew was the duly elected and qualified township clerk.

Plaintiff says that there were attached to said bond interest warrants or coupons, numbered one to thirty-eight, inclusive, for the semi-annual payment of interest each six months from January 1st, 1854, to July 1st, 1871, inclusive, each of said interest warrants being for the sum of thirty-five dollars, one being in the form following, to wit, and the others varying only in the number of the warrant and time of maturity:

DELAWARE COUNTY, OHIO.

Brown Township interest warrant No. 14, for thirty-five dollars, being for six months' interest on bond No. 9, payable on the first day of January, 1854, at the office of the treasurer of said township.

$35.00.] J. MERRIHEW, *T'p Clerk.*

31 That said bond was delivered to said railroad company, with all the said coupons attached thereto, in part payment for a subscription of seventeen thousand dollars to the capital stock of said railroad company, made by said trustees of Brown Township in pursuance to a vote of the qualified electors of said township.

Plaintiff further says that said trustees levied and collected a tax upon the taxable property in said township, and paid the interest coupons on said bond from the first day of January, up to and inclusive of the first day of January, 1859, being in all eleven semi-annual payments of interest on said bond.

Plaintiff further says that she is the owner and holder of said bond and of the coupons for the annual payment of interest thereon from July 1st, 1859, to January 1st, 1871, inclusive, which said coupons are now and always have been attached to said bond.

Plaintiff says that after the execution and delivery of said bond to said railway company as aforesaid, and in the year 1854, the said railroad company did endorse and deliver said bond, and the coupons thereto attached, to Brown, Collins and Brown, and that said Brown, Collins and Brown afterwards endorsed and delivered said bond and coupons to Bur-
32 net and Kelly, who afterwards endorsed and delivered the same to Richard B. Hopple, and Richard B. Hopple afterwards endorsed and delivered said bond and coupons to the plaintiff, who now holds and owns the same.

The following is a true copy of said endorsements:

The Springfield, Mt. Vernon and Pittsburg Railroad Company, for a valuable consideration, hereby assigns the within bond to Brown, Collins and Brown, or assigns, and for value received as aforesaid, hereby guarantees the final payment of this bond, principal and interest, on or before the first day of November, 1871.

By order of the directors of said company:

C. ANTHONY, *President.*

JULY 7TH, 1853.

For value received, I assign the within bond, and all benefit of the above guarantee, to Burnet and Kelly.

BROWN, COLLINS AND BROWN.

For value received, I assign the within bond, and all benefit of the above guarantee, to R. B. Hopple.

BURNET AND KELLY.

For value received, I assign the within bond, and all benefit of the above guarantee, to Annie Louis.

R. B. HOPPLE.

And the plaintiff further states that said bond was purchased by
33 said Brown, Collins and Brown, and by said Burnet and Kelly and Hopple, respectively, in good faith, for valuable consideration, before maturity of any of the coupons thereon now remaining unpaid, and that neither said railroad company, nor said Brown, Collins and Brown, nor said Burnett and Kelly, nor said Hopple, had any notice of defences to said bond, if any there be, at the respective times of said endorsements to them.

Plaintiff further says that after the passage of said act of March 21st, 1850, at the next annual election held in the several townships of said county of Delaware, more than 20 days after the passage of said act, the county commissioners of said Delaware County were not authorized by the vote of said county to subscribe to the stock of said railroad company.

Plaintiff further says that since January, 1859, no interest has been paid on said bond, and that said bond has become due and payable, but that the defendants, though often requested, have neglected and refused to pay said bond, or the several instalments of interest accrued since January, 1859, and that there is due the plaintiff thereon from the defendants the sum of one thousand dollars with seven per cent. per annum, interest from October
1st, 1871, and twenty-five instalments of semi-annual interest there-
34 on, as specified in said coupons thereto attached and being a part thereof of thirty-five dollars each, with interest on said instalments at six per cent. per annum, from their respective maturities, to wit, July 1st, 1859, and January and July 1st, in each of the years 1860, 1861, 1862, 1863, 1864, 1865, 1866, 1867, 1868, 1869, 1870, and 1871.

6. And for a sixth cause of action the plaintiff says that on the 20th day of April, 1853, the defendant being thereunto duly authorized by an act of the general assembly of the State of Ohio, entitled "An act to incorporate the Springfield and Mansfield Railroad Company," and passed March 21st, 1850, and an act entitled "An act regulating the mode of proceeding where county commissioners may be authorized by law to subscribe to the capital stock of railroads, turnpike roads, or other incorporated companies in this State," and passed February 28th, 1846, and an act entitled "An act to authorize special elections, to decide the question of subscription to the Springfield and Mansfield Railroad, by counties and townships," and passed March 25th, 1851, did execute and deliver to the Springfield, Mount Vernon and Pittsburgh Railroad Company, being the same corporation mentioned in said acts of the general assembly as the Springfield and Mansfield Railroad Company, the name of said company having been so
35 changed in accordance with law, a certain promissory note called a

bond, but not under seal, for the sum of one thousand dollars, in the words and figures following, to wit:

No. 1.] UNITED STATES OF AMERICA, STATE OF OHIO. [$1,000.00.

Township of Brown, in Delaware County, seven per cent. loan.

Be it known, that the township of Brown, in Delaware County, in the State of Ohio, owes to the Springfield, Mt. Vernon and Pittsburgh Railroad Company one thousand dollars, which sum the said township of Brown promises to pay to the said Springfield, Mt. Vernon and Pittsburgh Railroad Company or its assigns at the office of the treasurer of said township on the first day of October, A. D. 1871, and to pay the interest thereon at the rate of seven per cent. per annum, semi-annually, the first payment to be made on the first day of January, 1873, and on each first day of January and July thereafter, the said township of Brown, however, reserving to the said township the right to pay the amount hereby secured to be paid at any time after the first day of October, A. D. 1860, at their option, they giving notice of the said day of payment at least six months previous thereto, by advertisement published not less than four consecutive weeks in a newspaper published in the county of Delaware
36 aforesaid, and after the day of payment so advertised, the interest thereon shall cease. This obligation is issued in part payment of a subscription of three hundred and forty shares of fifty dollars each to the capital stock of the said Springfield, Mt. Vernon and Pittsburgh Railroad Company, made by the said township of Brown in pursuance of the provisions of several acts of the general assembly of the State of Ohio, and of a vote of the qualified electors of said township of Brown taken in pursuance thereof.

In testimony whereof the trustees of Brown Township aforesaid have hereunto set their hands and seals this 20th day of April, A. D. 1853.

JOSEPH C. PORTER,
SAMUEL S. OLIVER,
JOHN P. BLACK,
Trustees of Brown Township.

Attest:
JASON MERRIHEW,
Township Clerk.

Plaintiff further says that at the time said bond was executed and delivered as aforesaid, said Porter, Oliver and Black, were duly elected and qualified trustees of said Brown Township and said Merrihew was the duly elected & qualified township clerk. Plaintiff says that there were attached to said bond interest warrants, or coupons, numbered from one to thirty-eight, inclusive, for the semi-annual payment of interest, each six months from January 1st, 1854, to July 1st, 1871, inclusive, each of said
37 interest warrants being for the sum of thirty-five dollars, one being in the form following, to wit, and the others varying only in the number of the warrant and time of maturity.

DELAWARE COUNTY, OHIO:

Brown Township interest warrant No. 12, for thirty-five dollars, being

for six months' interest on bond No. 1, payable on the 1st day of July, 1858, at the office of the treasurer of said township.
$35.00.] J. MERRIHEW, *T'p Clerk.*

That said bond was delivered to said railroad company, with all the said coupons attached thereto, in part payment for a subscription of seventeen thousand dollars to the capital stock of said railroad company, made by said Trustees of Brown Township, in pursuance to a vote of the qualified electors of said township.

Plaintiff further says that said trustees levied and collected a tax upon the taxable property in said township, and paid the interest coupons on said bond from the first day of January, 1854, up to and inclusive of the first day of January, 1858, being, in all, nine semi-annual payments of interest on said bond.

Plaintiff further says that she is the owner and holder of said bond and of the coupons for the annual payment of interest thereon from
38 July 1st, 1858, to January first, 1871, inclusive, which said coupons are now and always have been attached to said bond.

Plaintiff says that after the execution and delivery of said bond to said railway company as aforesaid, and in the year 1854, the said railroad company did endorse and deliver said bond and the coupons thereto attached to Brown, Collins and Brown, and that said Brown, Collins and Brown afterwards endorsed and delivered said bond and coupons to William A. Collord, and William A. Collord afterwards endorsed and delivered said bond and coupons to the plaintiff, who now holds and owns the same. The following is a true copy of said endorsements:

The Springfield, Mt. Vernon and Pittsburgh Railroad Company, for a valuable consideration, hereby assigns the within bond to Brown, Collins and Brown, or assigns, and for value received as aforesaid hereby guarantees the final payment of this bond, principal and interest, on or before the first day of November, 1871.

By order of the directors of said company.

C. ANTHONY, *President.*

JULY 7TH, 1853.

For value received, I assign the within bond and all benefit of the above guarantee, to W. A. Collord.

BROWN, COLLINS AND BROWN.

39 For value received, I assign the within bond, and all benefit of the above guarantee, to Annie Louis.

W. A. COLLORD.

And the plaintiff further states that said bond was purchased by said Brown, Collins and Brown, and by said Collord in good faith, for valuable consideration before maturity of any of the coupons thereon now remaining unpaid, and that neither said railroad company nor said Brown, Collins and Brown, nor said Collord had any notice of defences to said bond, if any there be, at the respective times of said endorsements to them.

Plaintiff further says that after the passage of said act of March 21st, 1850, at the next annual election held in the several townships of said county of Delaware, more than twenty days after the passage of said act,

the county commissioners of said Delaware County were not authorized by the vote of said county to subscribe to the stock of said railroad company.

Plaintiff further says that since January first, 1858, no interest has been paid on said bond, and that said bond has become due and payable, but that the defendants, though often requested, have refused and neglected to pay said bond, or the several instalments of interest accrued since January, 1858, and that there is due the plaintiff thereon from the defend-
40 ants the sum of one thousand dollars, with seven per cent. per annum interest from October 1st, 1871, and twenty-seven instalments of semi-annual interest thereon, as specified in said coupons thereto attached, and being a part thereof of thirty-five dollars each, with interest on said instalments at six per cent. per annnm from their respective maturities, to wit, July 1st, 1858, January 1st and July 1st, 1859, and January and July 1st in each of the years 1860, 1861, 1862, 1863, 1864, 1865, 1866, 1867, 1868, 1869, 1870, and 1871.

7. And for a seventh cause of action the plaintiff says, that on the 20th day of April, 1853, the defendants, being thereunto duly authorized by an act of the general assembly of the State of Ohio, entitled "An act to incorporate the Springfield and Mansfield Railroad Company," and passed March twenty-first, 1850, and an act entitled "An act regulating the mode of proceeding where county commissioners may be authorized by law to subscribe to the capital stock of railroads, turnpike roads, or other incorporated companies in this State," and passed February 28th, 1846, and an act entitled "An act to authorize special elections to decide the question of subscription to the Springfield and Mansfield Railroad by counties and town-
41 ships," and passed March 25th, 1851, did execute and deliver to the Springfield, Mount Vernon and Pittsburgh Railroad Company, being the same corporation mentioned in said acts of the general assembly as the Springfield and Mansfield Railroad Company, the name of said company having been so changed in accordance with law, a certain promissory note called a bond, but not under seal, for the sum of one thousand dollars, in the words and figures following, to wit:

No. 4.] UNITED STATES OF AMERICA, STATE OF OHIO. [$1,000.

Township of Brown, in Delaware County, seven per cent. loan.

Be it known that the Township of Brown, in Delaware County, in the State of Ohio, owes to the Springfield, Mt. Vernon and Pittsburgh Railroad Company one thousand dollars, which sum the said Township of Brown promises to pay to the said Springfield, Mt. Vernon and Pittsburgh Railroad Company, or its assigns, at the office of the treasurer of said township, on the first day of October, A. D. 1871, and to pay the interest thereon at the rate of seven per cent. per annum, semi-annually, the first payment to be made on the first day of January, 1853, and on each first day of January and July thereafter, the said Township of Brown, however, reserving to the said township the right to pay the amount hereby secured to be paid at any time after the first day of October, A.
42 D. 1860, at their option, they giving notice of the said day of payment at least six months previous thereto, by advertisement published not less than four consecutive weeks in a newspaper published in the county of Delaware aforesaid, and after the day of payment so adver-

tised the interest thereon shall cease. This obligation is issued in part payment of a subscription of three hundred and forty shares of fifty dollars each to the capital stock of the said Springfield, Mt. Vernon and Pittsburgh Railroad Company, made by the said Township of Brown, in pursuance of the provisions of several acts of the general assembly of the State of Ohio, and of a vote of the qualified electors of said township of Brown, taken in pursuance thereof.

In testimony whereof the Trustees of Brown Township aforesaid have hereunto set their hands and seals this twentyth day of April, A. D. 1853.

JOSEPH C. PORTER,
SAMUEL S. OLIVER,
JOHN P. BLACK,
Trustees of Brown Township.

Attest:
JASON MERRIHEW, *Township Clerk.*

Plaintiff further says that at the time said bond was executed and delivered as aforesaid said Porter, Oliver, and Black were the duly
43 elected and qualified trustees of said Brown Township, and said Merrihew was the duly elected and qualified township clerk.

Plaintiff says that there was attached to said bond interest warrants or coupons numbered from one to thirty-eight, inclusive, for the semi-annual payment of interest each six months, from January first, 1854, to July 1st, 1871, inclusive; each of said interest warrants being for the sum of thirty-five dollars, one being in the form following, to wit, the other varying only in the number of the warrant and time of maturity.

DELAWARE COUNTY, OHIO.

Brown Township interest warrant No. 12, for thirty-five dollars, being for six months' interest on bond No 4, payable on the first day of July, 1858, at the office of the treasurer of said township.
$35.00.] J. MERRIHEW, *Tp. Clerk.*

That said bond was delivered to said railroad company with all the said coupons attached thereto in part payment for a subscription of seventeen thousand dollars to the capital stock of said railroad company made by said Trustees of Brown Township, in pursuance to a vote of the qualified electors of said township.

Plaintiff further says that said trustees levied and collected a tax upon the taxable property in said township, and paid the interest coupons
44 on said bond from the first day of January, 1854, up to and inclusive of the first day of January, 1858, being in all nine semi-annual payments of interest on said bond.

Plaintiff further says that she is the owner and holder of said bond, and of the coupons for the annual payment of interest thereon from July 1st, 1858, to January 1st, 1871, inclusive, which said coupons are now and always have been attached to said bond.

Plaintiff says that after the execution and delivery of said bond to said railway company, as aforesaid, and in the year 1854, the said railroad company did endorse and deliver said bond and the coupons thereto attached to Brown, Collins and Brown, and that said Brown, Collins and Brown

afterwards endorsed and delivered said bond and coupons to William A. Collord, and William A. Collard afterwards endorsed and delivered said bond and coupons to the plaintiff, who now holds and owns the same.

The following is a true copy of said endorsements:

The Springfield, Mt. Vernon and Pittsburgh Railroad Company, for a valuable consideration, hereby assigns the within bond to Brown, Collins and Brown, or assigns, and for value received as aforesaid hereby guarantees the final payment of this bond, principal and interest, on or before the first day of November, 1871.

By order of the directors of said company.

45 C. ANTHONY, *President.*

JULY 7TH, 1853.

For value received, I assign the within bond and all benefit of the above guarantee to W. A. Collord.

BROWN, COLLINS AND BROWN.

For value received, I assign the within bond and all benefit of the above guarantee to Annie Louis.

W. A. COLLORD.

And the plaintiff further states that said bond was purchased by said Brown, Collins and Brown, and by said Collord, in good faith, for valuable consideration, before maturity of any of the coupons thereon now remaining unpaid, and that neither said railroad company nor said Brown Collins and Brown, nor said Collord, had any notice of defenses to said bond, if any there be, at the respective times of said endorsements to them.

Plaintiff further says that after the passage of said act of March 21st, 1850, at the next annual election held in the several townships of said county of Delaware, more than twenty days after the passage of said act, the county commissioners of said Delaware County were not authorized by the vote of said county to subscribe to the stock of said railroad company.

Plaintiff further says that since January, 1858, no interest has been paid on said bond, and that said bond has become due and

46 payable, but that the defendants, though often requested, have neglected and refused to pay said bond, or the several instalments of interest accrued since January, 1858, and that there is due the plaintiff thereon from the defendants the sum of one thousand dollars, with seven per cent. per annum interest from October 1st, 1871, and twenty-seven instalments of semi-annual interest thereon, as specified in said coupons thereto attached and being a part thereof, of thirty-five dollars each, with interest on said instalments at six per cent. per annum, from their respective maturities, to wit, July 1st, 1858, January 1st and July 1st, 1859, and January and July 1st in each of the years 1860, 1861, 1862, 1863, 1864, 1865, 1866, 1867, 1868, 1869, 1870, and 1871.

8. And for an eighth cause of action the plaintiff says that on the 20th day of April, 1853, the defendants being thereunto duly authorized by an act of the general assembly of the State of Ohio, entitled "An act to incorporate the Springfield and Mansfield Railroad Company," and passed

March 21st, 1850, and an act entitled "An act regulating the mode of proceeding where county commissioners may be authorized by law to subscribe to the capital stock of railroads, turnpike roads, or other incorporated companies in this State," and passed February 28th, 1846,
47 and an act entitled "An act to authorize special elections to decide the question of subscription to the Springfield and Mansfield Railroad by counties and townships," and passed March 25th, 1851, did execute and deliver to the Springfield, Mt. Vernon and Pittsburgh Railroad Company, being the same corporation mentioned in said acts of the general assembly as the Springfield and Mansfield Railroad Company, the name of said company having been so changed in accordance with law, a certain promissory note called a bond, but not under seal, for the sum of one thousand dollars, in the words and figures following, to wit:

No. 6.] UNITED STATES OF AMERICA, STATE OF OHIO. [$1,000.00.

Township of Brown, in Delaware County, seven per cent. loan.

Be it known that the Township of Brown, in Delaware County, in the State of Ohio, owes to the Springfield, Mt. Vernon and Pittsburgh Railroad Company one thousand dollars, which sum the said Township of Brown promises to pay to the said Springfield, Mt. Vernon and Pittsburgh Railroad Company, or its assigns, at the office of the treasurer of said township, on the first day of October, A. D. 1871, and to pay the interest thereon, at the rate of seven per cent. per annum, semi-annually, the first payment to be made on the first day of January, 1853, and on each first day of January and July thereafter, the said Township of Brown, however, reserving to the said township the right to pay the
48 amount hereby secured to be paid at any time after the first day of October, A. D. 1860, at their option, they giving notice of the said day of payment at least six months previous thereto, by advertisement published not less than four consecutive weeks in a newspaper published in the county of Delaware aforesaid, and after the day of payment advertised, the interest thereon shall cease. This obligation is issued in part payment of a subscription of three hundred and forty shares of fifty dollars each to the capital stock of the said Springfield, Mt. Vernon and Pittsburgh Railroad Company made by the said Township of Brown in pursuance of the provisions of several acts of the general assembly of the State of Ohio, and of a vote of the qualified electors of said township of Brown, taken in pursuance thereof.

In testimony whereof the Trustees of Brown Township aforesaid have hereunto set their hands and seals this 20th day of April, A. D. 1853.

JOSEPH C. PORTER,
SAMUEL S. OLIVER,
JOHN P. BLACK,
Trustees of Brown Township.

Attest:
JASON MERRIHEW, *Township Clerk.*

Plaintiff further says that at the time said bond was executed and delivered as aforesaid said Porter, Oliver, and Black were the duly

49 elected and qualified trustees of said Brown Township, and said Merrihew was the duly elected and qualified township clerk.

Plaintiff says that there were attached to said bond interest warrants or coupons, numbered from 1 to 38 inclusive, for the semi-annual payment of interest each six months from January 1st, 1854, to July 1st, 1871, inclusive, each of said interest warrants being for the sum of thirty-five dollars, one being in the form following, to wit, and the others varying only in the number of the warrant and time of maturity:

DELAWARE COUNTY, OHIO:

Brown Township interest warrant No. 12, for thirty-five dollars, being for six months' interest on bond No. 6, payable on the first day of July, 1858, at the office of the treasurer of said township.

$35.00.] J. MERRIHEW, *T'p Clerk.*

That said bond was delivered to said railroad company, with all the said coupons attached thereto, in part payment for a subscription of seventeen thousand dollars to the capital stock of said railroad company made by said Trustees of Brown Township in pursuance to a vote of the qualified electors of said township.

Plaintiff further says that said trustees levied and collected a tax upon the taxable property in said township and paid the interest cou-
50 pons on said bond from the first day of January, 1854, up to and inclusive of the first day of January, 1858, being in all nine semi-annual payments of interest on said bond.

Plaintiff further says that she is the owner and holder of said bond and of the coupons for the annual payment of interest thereon from July 1st, 1858, to January first, 1871, inclusive, which said coupons are now and always have been attached to said bond.

Plaintiff says that after the execution and delivery of said bond to said railway company as aforesaid, and in the year 1854, the said railroad company did endorse and deliver said bond and the coupons thereto attached to Brown, Collins and Brown; that said Brown, Collins and Brown afterwards endorsed and delivered said bond and coupons to William A. Collord, and William A. Collord afterwards endorsed and delivered said bond and coupons to the plaintiff, who now holds and owns the same.

The following is a true copy of said endorsements:

The Springfield, Mt. Vernon and Pittsburgh Railroad Company, for a valuable consideration, hereby assigns the within bond to Brown, Collins and Brown, or assigns, and for value received, as aforesaid, hereby
51 guarantees the final payment of this bond, principal and interest, on or before the first day of November, 1871.

By order of the directors of said company.

C. ANTHONY, *President.*

JULY 7TH, 1853.

For value received, I assign the above bond and all benefit of the above guarantee to W. A. Collord.

BROWN, COLLINS & BROWN.

For value received, I assign the within bond and all benefit of the above guarantee to Annie Louis.

W. A. COLLORD.

And the plaintiff further states that said bond was purchased by said Brown, Collins and Brown, and by said Collord in good faith, for valuable consideration, before maturity of any of the coupons thereon now remaining unpaid, and that neither said railroad company nor said Brown, Collins and Brown, nor said Collord had any notice of defences to said bond, if any there be, at the respective times of said endorsements to them.

Plaintiff further says that after the passage of said act of March 21st, 1850, at the next annual election held in the several townships of said county of Delaware, more than twenty days after the passage of said act, the county commissioners of said Delaware County were not author-
52 ized by the vote of said county to subscribe to the stock of said railroad company.

Plaintiff further says that since January, 1858, no interest has been paid on said bond, and that said bond has become due and payable, but that the defendants, though often requested, have neglected and refused to pay said bond or the several installments of interest accrued since January, 1858, and that there is due the plaintiff thereon from the defendants the sum of one thousand dollars, with seven per cent. per annum interest from October 1st, 1871, and twenty-seven instalments of semi-annual interest thereon as specified in said coupons thereto attached, and being a part thereof, of thirty-five dollars each, with interest on said instalments at six per cent. per annum from their respective maturities, to wit, July 1st, 1858, January 1st and July 1st, 1859, and January and July first in each of the years 1860, 1861, 1862, 1863, 1864, 1865, 1866, 1867, 1868, 1869, 1870, and 1871.

9. And for a ninth cause of action the plaintiff says that on the 20th day of April, 1853, the defendants being thereunto duly authorized by an act of the general assembly of the State of Ohio entitled "An act to incorporate the Springfield and Mansfield Railroad Company," and passed March 21st, 1850, and an act entitled "An act regulating the mode of proceeding
53 where county commissioners may be authorized by law to subscribe to the capital stock of railroads, turnpike roads, or other incorporated companies in this State," and passed February 28th, 1846, and an act entitled "An act to authorize special elections to decide the question of subscription to the Springfield and Mansfield Railroad by counties and townships," and passed March 25th, 1851, did execute and deliver to the Springfield, Mt. Vernon and Pittsburgh Railroad, being the same corporation mentioned in said acts of the general assembly as the Springfield and Mansfield Railroad Company, the name of said company having been so changed in accordance with law, a certain promissory note called a bond, but not under seal, for the sum of one thousand dollars, in the words and figures following, to wit:

No. 2.] UNITED STATES OF AMERICA, STATE OF OHIO. [$1,000.00.

Township of Brown, in Delaware County, seven per cent. loan.

Be it known that the Township of Brown, in Delaware County, in the State of Ohio, owes to the Springfield, Mt. Vernon and Pittsburgh Railroad Company one thousand dollars, which sum the said Township of Brown promises to pay to the said Springfield, Mt. Vernon and Pittsburgh Railroad Company, or its assigns, at the office of the treas-

54 urer of said township, on the first day of October, A. D. 1871, and to pay the interest thereon, at the rate of seven per cent. per annum, semi-annually, the first payment to be made on the first day of January, 1853, and on each first day of January and July thereafter, the said Township of Brown however reserving to the said township the right to pay the amount hereby secured to be paid at any time after the first day of October, A. D. 1860, at their option, they giving notice of the said day of payment at least six months' previous thereto, by advertisement published not less than four consecutive weeks in a newspaper published in the county of Delaware aforesaid, and after the day of payment so advertised the interest thereon shall cease. This obligation is issued in part payment of a subscription of three hundred and forty shares of fifty dollars each to the capital stock of the said Springfield, Mt. Vernon and Pittsburgh Railroad Company, made by the said Township of Brown, in pursuance of the provisions of the several acts of the general assembly of the State of Ohio, and of a vote of the qualified electors of said township of Brown taken in pursuance thereof.

In testimony whereof the trustees of Brown Township aforesaid have hereunto set their hands and seals this 20th day of April, A. D. 1853.

JOSEPH C. PORTER,
SAMUEL S. OLIVER,
JOHN P. BLACK,
Trustees of Brown Township.

55 Attest:
JASON MERRIHEW, *Township Clerk.*

Plaintiff further says that at the time said bond was executed and delivered as aforesaid said Porter, Oliver, and Black were the duly elected and qualified trustees of said Brown Township, and said Merrihew was the duly elected and qualified clerk of said township.

Plaintiff says that there were attached to said bond interest warrants or coupons numbered from one to thirty-eight, inclusive, for the semi-annual payment of interest each six months from January 1st, 1854, to July 1st, 1871, inclusive, each of said interest warrants being for the sum of thirty-five dollars, one being in the form following, to wit, and the others varying only in the number of the warrant and time of maturity.

DELAWARE COUNTY, OHIO:

Brown Township interest warrant No. 14, for thirty-five dollars, being for six months' interest on bond No. 2, payable on the first day of January, 1854, at the office of the treasurer of said township.

$35.00.] J. MERRIHEW, *T'p Clerk.*

That said bond was delivered to said railroad company with all the said coupons attached thereto in part payment for a subscription of seventeen thousand dollars to the capital stock of said railroad company, made by said trustees of Brown Township in pursuance to a vote of the
56 qualified electors of said township.

Plaintiff further says that the said trustees levied and collected a tax upon the taxable property in said township, and paid the interest coupons on said bond from the first day of January, 1854, up to and inclusive

of the first day of January, 1859, being in all eleven semi-annual payments of interest on said bond.

Plaintiff further says that she is the owner and holder of said bond and of the coupons for the annual payment of interest thereon from July 1st, 1859, to January 1st, 1871, inclusive, which said coupons are now and always have been attached to said bond.

Plaintiff says that after the execution and delivery of said bond to said railway company as aforesaid, and in the year 1854, the said railroad company did endorse and deliver said bond and the coupons thereto attached to Brown, Collins and Brown, and that Brown, Collins and Brown afterwards endorsed and delivered said bond and coupons to Burnet and Kelly, and they afterwards endorsed and delivered the same to William A. Collord, and William A. Collord afterwards endorsed and delivered the said bond and coupons to the plaintiff, who now holds and owns the same.

The following is a true copy of said endorsements:

57 The Springfield, Mt. Vernon and Pittsburgh Railroad Company, for a valuable consideration, hereby assigns the within bond to Brown, Collins and Brown or assigns, and for value received as aforesaid, hereby guarantees the final payment of this bond, principal and interest, on or before the 1st day of November, 1871.

By order of the directors of said company.

C. ANTHONY, *President.*

For value received, I assign the within bond and all benefit of the above guarantee to Burnet and Kelly.

BROWN, COLLINS AND BROWN.

For value received, I assign the within bond and all benefit of the above guarantee to William A. Collard.

BURNET AND KELLY.

For value received, I assign the within bond and all benefit of the above guarantee to Annie Louis.

W. A. COLLORD.

And the plaintiff further states that said bond was purchased by said Brown, Collins and Brown, and by said Burnet and Kelly, and by said Collord in good faith, for valuable consideration, before maturity of any of the coupons thereon now remaining unpaid, and that neither said railroad company, nor said Brown, Collins and Brown, nor said Burnet and Kelly, nor said Collord, had any notice of defences to said bond, if any there be, at the respective times of said endorsements to them.

58 Plaintiff further says that after the passage of said act of March 21st, 1850, at the next annual election held in the several townships of said county of Delaware, more than twenty days after the passage of said act, the county commissioners of said Delaware County were not authorized by the vote of said county to subscribe to the stock of said railroad company.

Plaintiff further says that since January, 1859, no interest has been paid on said bond, and that said bond has become due and payable, but that the defendants, though often requested, have neglected and refused to pay said bond or the several instalments of interest accrued since Jan-

uary, 1859, and that there is due the plaintiff thereon from the defendants the sum of one thousand dollars, with seven per cent. per annum interest from October 1st, 1871, and twenty-five instalments of semi-annual interest thereon, as specified in said coupons thereto attached, and being a part thereof, of thirty-five dollars each, with interest on said instalments at six per cent. per annum from their respective maturities, to wit, July 1st, 1858; January 1st, and July 1st, 1859; and January and July first in each of the years 1860, 1861, 1862, 1863, 1864, 1865, 1866, 1867, 1868, 1869, 1870, and 1871.

59 10. And for a tenth cause of action the plaintiff says that on the 20th day of April, 1853, the defendants being thereunto duly authorized by an act of the general assembly of the State of Ohio, entitled "An act to incorporate the Springfield and Mansfield Railroad Company," and passed March 21st, 1850, and an act entitled "An act regulating the mode of proceeding where county commissioners may be authorized by law to subscribe to the capital stock of railroads, turnpike roads, or other incorporated companies in this State," and passed February 28th, 1846, and an act entitled "An act to authorize special elections to decide the question of subscription to the Springfield and Mansfield Railroad Company by counties and townships," and passed March 25th, 1851, did execute and deliver to the Springfield, Mt. Vernon and Pittsburgh Railroad Company, being the same corporation mentioned in said acts of the general assembly as the Springfield and Mansfield Railroad Company, the name of said company having been so changed in accordance with law, a certain promissory note called a bond, but not under seal, for the sum of one thousand dollars, in the words and figures following, to wit:

No. 3.] UNITED STATES OF AMERICA, STATE OF OHIO. [$1,000.

Township of Brown, in Delaware County, seven per cent. loan.

60 Be it known that the Township of Brown, in Delaware County, in the State of Ohio, owes to the Springfield, Mt. Vernon and Pittsburgh Railroad Company one thousand dollars, which sum the said Township of Brown promises to pay to the said Springfield, Mt. Vernon and Pittsburgh Railroad Company, or its assigns, at the office of the treasurer of said township, on the first day of October, A. D. 1871, and to pay the interest thereon, at the rate of seven per cent. per annum, semi-annually, the first payment to be made on the first day of January and July thereafter, the said Township of Brown, however, reserving to the said township the right to pay the amount hereby secured to be paid at any time after the first day of October, A. D. 1860, at their option, they giving notice of the said day of payment at least six months previous thereto, by advertisement published not less than four consecutive weeks in a newspaper published in the county of Delaware aforesaid, and after the day of payment so advertised the interest thereon shall cease. This obligation is issued in part payment of a subscription of three hundred and forty shares of fifty dollars each to the capital stock of the said Springfield, Mt. Vernon and Pittsburgh Railroad Company, made by the said Township of Brown in pursuance of the provisions of several acts of the general assembly of the State of Ohio, and of a vote of the

61 qualified electors of said township of Brown taken in pursuance thereof.

In testimony whereof the trustees of Brown Township aforesaid have hereunto set their hands and seals this 20th day of April, A. D. 1853.

JOSEPH C. PORTER,
SAMUEL S. OLIVER,
JOHN P. BLACK,
Trustees of Brown Township.

Attest:
JASON MERRIHEW, *Township Clerk.*

Plaintiff further says that at the time said bond was executed and delivered as aforesaid said Porter, Oliver and Black were the duly elected and qualified trustees of said Brown Township, and said Merrihew was the duly elected and qualified township clerk. Plaintiff says that there were attached to said bond interest warrants or coupons, numbered from one to thirty-eight, inclusive, for the semi-annual payment of interest each six months, from January first, 1854, to July first, 1871, inclusive, each of said interest warrants being for the sum of thirty-five dollars, one being in the form following, to wit, the others varying only in the number of the warrant and time of maturity:

DELAWARE COUNTY, OHIO:

62 Brown Township interest warrant No. 12, for thirty-five dollars, being for six months' interest on bond No. 3, payable on the first day of July, 1858, at the office of the treasurer of said township.

$35.00.] J. MERRIHEW, *T'p Clerk.*

That said bond was delivered to said railroad company, with all the said coupons attached thereto, in part payment for a subscription of seventeen thousand dollars to the capital stock of said railroad company, made by said trustees of said Brown Township, in pursuance to a vote of the qualified electors of said township.

Plaintiff further says that said trustees levied and collected a tax upon the taxable property in said township, and paid the interest coupons on said bond from the said first day of January, 1854, up to and inclusive of the first day of January, 1858, being in all nine semi-annual payments of interest on said bond.

Plaintiff further says that she is the owner and holder of said bond and of the coupons for the annual payment of interest thereon from July 1st, 1858, to January 1st, 1871, inclusive, which said coupons are now and always have been attached to said bond.

Plaintiff says that after the execution and delivery of said bond to said railway company as aforesaid, and in the year 1854, the said railroad company did endorse and deliver said bond and the coupons thereto
63 attached to Brown, Collins and Brown, and that said Brown, Collins and Brown afterwards endorsed and delivered said bond and coupons to McMillan and Maloney, who afterwards endorsed and delivered the same to William A. Collard, and William A. Collard afterwards endorsed and delivered said bond and coupons to the plaintiff, who now holds and owns the same.

The following is a true copy of said endorsements:

The Springfield, Mt. Vernon and Pittsburgh Railroad Company, for a valuable consideration, hereby assigns the within bond to Brown, Collins and Brown, or assigns, and for value received as aforesaid hereby guarantees the final payment of this bond, principal and interest, on or before the first day of November, 1871.

By order of the directors of said company.

C. ANTHONY, *President.*

For value received, I assign the within bond and all benefit of the above guarantee to McMillan and Malony.

BROWN, COLLINS AND BROWN.

For value received, I assign the within bond and all benefit of the above guarantee to W. A. Collord.

McMILLAN AND MALONY.

For value received, I assign the within bond and all benefit of the above guarantee to Annie Louis.

W. A. COLLORD.

64 And the plaintiff further says that said bond was purchased by said Brown, Collins and Brown, and by said McMillan and Malony, and by said Collord, in good faith for valuable consideration, before maturity of any of the coupons thereon now remaining unpaid, and that neither said railroad company, nor said Brown, Collins and Brown, nor said McMillan and Malony, nor said Collord, had any notice of defences to said bond, if any there be, at the respective times of said endorsements to them.

Plaintiff further says that after the passage of said act of March 21, 1850, at the next annual election held in the several townships of said county of Delaware, more than twenty days after the passage of said act, the county commissioners of said Delaware County were not authorized by the vote of said county to subscribe to the stock of said railroad company.

Plaintiff further says that since January, 1858, no interest has been paid on said bond and that said bond has become due and payable, but that the defendants, though often requested, have neglected and refused to pay said bond or the several instalments of interest accrued since January, 1858, and that there is due the plaintiff thereon from the defendants the sum of one thousand dollars with seven per cent. per annum interest

65 from October 1st, 1871, and twenty-seven instalments of semi-annual interest thereon, as specified in said coupons thereto attached, and being a part thereof of thirty-five dollars each, with interest on said instalments at six per cent. from their respective maturities, to wit, July 1st, 1858, January 1st, and July 1st, 1859, and January and July 1st in each of the years 1860, 1861, 1862, 1863, 1864, 1865, 1866, 1867, 1868, 1869, 1870, and 1871.

11. And for an eleventh cause of action the plaintiff says that on the 20th day of April, 1853, the defendants being thereunto duly authorized by an act of the general assembly of the State of Ohio, entitled "An act to incorporate the Springfield and Mansfield Railroad Company," and passed March 21st, 1850, and an act entitled "An act regulating the mode of proceeding where county commissioners may be authorized by law to subscribe to the capital stock of railroads, turnpike roads, and other incor-

porated companies in the State," and passed February 28th, 1846, and an act entitled "An act to authorize special elections to decide the question of subscription to the Springfield and Mansfield Railroad by counties and townships," and passed March 25th, 1851, did execute and deliver to the Springfield, Mt. Vernon, and Pittsburgh Railroad Company, being the same corporation mentioned in said acts of the general assembly as the Springfield and Mansfield Railroad Company, the name of said company having been so changed in accordance with law, a certain promis-
66 sory note called a bond, but not under seal, for the sum of five hundred dollars, in the words and figures following, to wit:

No. 1.] UNITED STATES OF AMERICA, STATE OF OHIO. [$500.00.

Township of Brown, in Delaware County, seven per cent. loan.

Be it known that the Township of Brown, in Delaware County, in the State of Ohio, owes to the Springfield, Mt. Vernon and Pittsburgh Railroad Company five hundred dollars, which sum the said Township of Brown promises to pay to the said Springfield, Mt. Vernon and Pittsburgh Railroad Company, or its assigns, at the office of the treasurer of said township, on the first day of October, A. D. 1871, and to pay the interest thereon at the rate of seven per cent. per annum semi-annually, the first payment to be made on the first day of January, 1853, and on each first day of January and July thereafter, the said Township of Brown, however, reserving to the said township the right to pay the amount hereby secured to be paid at any time after the first day of October, A. D. 1860, at their option, they giving notice of the said day of payment at least six months previous thereto, by advertisement published not less than four consecutive weeks in a newspaper published in the county of Delaware aforesaid, and after the day of payment so advertised the
67 interest thereon shall cease. This obligation is issued in part payment of a subscription of three hundred and forty shares of fifty dollars each to the capital stock of the said Springfield, Mt. Vernon and Pittsburgh Railroad Company, made by the said Township of Brown in pursuance of the provisions of several acts of the general assembly of the State of Ohio, and of a vote of the qualified electors of said Township of Brown taken in pursuance thereof.

In testimony whereof the trustees of Brown Township aforesaid have hereunto set their hands and seals this 20th day of April, A. D. 1853.

JOSEPH C. PORTER,
SAMUEL S. OLIVER,
JOHN P. BLACK,
Trustees of Brown Township.

Attest:
JASON MERRIHEW,
Township Clerk.

Plaintiff further says that at the time said bond was executed and delivered as aforesaid, said Porter, Oliver, and Black were the duly elected and qualified trustees of said Brown Township, and said Merrihew was the duly elected and qualified township clerk.

Plaintiff says that there were attached to said bond interest warrants or coupons numbered from one to thirty-eight, inclusive, for the semi-annual payment of interest, each six months from January 1st, 1854,
68 to July 1st, 1871, inclusive, each of said interest warrants being for the sum of seventeen dollars and fifty cents, one being in the form following, to wit, and the others varying only in the number of the warrant and time of maturity:

DELAWARE COUNTY, OHIO.

Brown Township interest warrant, No. 12, for seventeen dollars and fifty cents, being for six months' interest on bond No. 1, payable on the first day of July, 1858, at the office of the treasurer of said township. $17.50.]

J. MERRIHEW, *T'p Clerk.*

That said bond was delivered to said railroad company with all the said coupons attached thereto, in part payment for a subscription of seventeen thousand dollars to the capital stock of said railroad company, made by said Trustees of Brown Township in pursuance to a vote of the qualified electors of said township.

Plaintiff further says that said trustees levied and collected a tax upon the taxable property in said township, and paid the interest coupons on said bond from the first day of January, 1854, up to and inclusive of the first day of January, 1858, being in all nine semi-annual payments of interest on said bond.

Plaintiff further says that she is the owner and holder of said
69 bond, and of the coupons for the annual payment of interest thereon from July 1st, 1858, to January 1st, 1871, inclusive, which said coupons are now and always have been attached to said bond.

Plaintiff says that after the execution and delivery of said bond to said railroad company as aforesaid, and in the year 1854, the said railroad company did endorse and deliver said bond and the coupons thereto attached to Brown, Collins and Brown, and that said Brown, Collins and Brown afterwards endorsed and delivered said bond and coupons to William A. Collord, and William A. Collord afterwards endorsed and delivered said bond and coupons to the plaintiff, who now holds and owns the same.

The following is a true copy of said endorsements:

The Springfield, Mt. Vernon and Pittsburgh Railroad Company for a valuable consideration hereby assigns the within bond to Brown, Collins and Brown, or assigns, and for value received as aforesaid hereby guarantees the final payment of this bond, principal and interest, on or before the 1st day of November, 1871.

By order of the directors of said company.

C. ANTHONY, *President.*

8TH JUNE, 1854.

70 For value received, I assign the within bond and all benefit of the above guarantee to W. A. Collord.

BROWN, COLLINS AND BROWN.

For value received, I assign the within bond and all benefit of the above guarantee to Annie Louis.

W. A. COLLORD.

And the plaintiff further states that said bond was purchased by said Brown, Collins and Brown, and by said Collord, in good faith for valuable consideration before the maturity of any of the coupons thereon now remaining unpaid, and that neither said railroad company, nor said Brown, Collins and Brown, nor said Collord had any notice of defences to said bond, if any there be, at the respective times of said endorsements to them.

Plaintiff further says that after the passage of said act of March 21st, 1850, at the next annual election held in the several townships of said county of Delaware, more than twenty days after the passage of said act, the county commissioners of said Delaware County were not authorized by the vote of said county to subscribe to the stock of said railroad company.

Plaintiff further says that since January, 1858, no interest has
71 been paid on said bond, and that said bond has become due and payable, but that the defendants, though often requested, have neglected and refused to pay said bond or the several instalments of interest accrued since January, 1858, and that there is due the plaintiff thereon from the defendants the sum of five hundred dollars, with seven per cent. per annum interest from October 1st, 1871, and twenty-seven instalments of semi-annual interest thereon, as specified in said coupons thereto attached, and being a part thereof, of seventeen dollars and fifty cents each, with interest on said instalments at six per cent. per annum from their respective maturities, to wit, July 1st, 1858, January and July 1, 1859, and January and July 1st in each of the years 1860, 1861, 1862, 1863, 1864, 1865, 1866, 1867, 1868, 1869, 1870, and 1871.

12. And for a twelfth cause of action the plaintiff says that on the 20th day of April, 1853, the defendants being thereunto duly authorized by an act of the general assembly of the State of Ohio, entitled "An act to incorporate the Springfield and Mansfield Railroad Company," and passed March 21st, 1850, and an act entitled "An act regulating the mode of proceeding where county commissioners may be authorized by law to subscribe to the capital stock of railroads, turnpike roads, or other incor-
porated companies in this State," and passed February 28th, 1846,
72 and an act entitled "An act to authorize special elections to decide the question of subscription to the Springfield and Mansfield Railroad by counties and townships," and passed March 25th, 1851, did execute and deliver to the Springfield, Mt. Vernon and Pittsburgh Railroad Company, being the same corporation mentioned in said acts of the general assembly as the Springfield and Mansfield Railroad Company, the name of said company having been so changed in accordance with law, a certain promissory note called a bond, but not under seal, for the sum of five hundred dollars, in the words and figures following, to wit:

No. 2.] UNITED STATES OF AMERICA, STATE OF OHIO. [$500.00.

Township of Brown, in Delaware County, seven per cent. loan.

Be it known that the Township of Brown, in Delaware County, in the State of Ohio, owes to the Springfield, Mt. Vernon and Pittsburgh Railroad Company five hundred dollars, which sum the said Township of Brown promises to pay to the said Springfield, Mt. Vernon and Pittsburgh Railroad Company, or its assigns, at the office of the treasurer of said township, on the first day of October, A. D. 1871, and to pay the
73 interest thereon, at the rate of seven per cent. per annum, semi-

annually, the first payment to be made on the first day of January, 1853, and on each first day of January and July thereafter; the said Township of Brown, however, reserving to the said township the right to pay the amount hereby secured to be paid at any time after the first day of October, A. D. 1860, at their option, they giving notice of the said day of payment at least six months previous thereto by advertisement published not less than four consecutive weeks in a newspaper published in the county of Delaware aforesaid, and after the day of payment so advertised the interest thereon shall cease. This obligation is issued in part payment of a subscription of three hundred and forty shares of fifty dollars each to the capital stock of the Springfield, Mt. Vernon and Pittsburgh Railroad Company, made by the said Township of Brown in pursuance of several acts of the general assembly of the State of Ohio, and of a vote of the qualified electors of said township of Brown taken in pursuance thereof.

In testimony whereof the Trustees of Brown Township aforesaid have hereunto set their hands and seals this 20th day of April, A. D. 1853.

JOSEPH C. PORTER,
SAMUEL S. OLIVER,
74 JOHN C. BLACK,
Trustees of Brown Township.

Attest:
JASON MERRIHEW, *Township Clerk.*

Plaintiff further says that at the time said bond was executed and delivered as aforesaid said Porter, Oliver, and Black were the duly elected and qualified trustees of said Brown Township, and said Merrihew was the duly elected and qualified township clerk.

Plaintiff says that there were attached to said bond interest warrants or coupons, numbered from one to thirty-eight, inclusive, for the semi-annual payment of interest each six months from January 1st, 1854, to July 1st, 1871, inclusive, each of said interest warrants being for the sum of seventeen dollars and fifty cents, one being in the form following, to wit, and the others varying only in the number of the warrant and time of maturity:

DELAWARE COUNTY, OHIO:

Brown Township interest warrant No. 12, for seventeen dollars and fifty cents, being for six months' interest on bond No. 2, payable on the first day of July, 1858, at the office of the treasurer of said township.
$17.50.] J. MERRIHEW, *T'p Clerk.*

That said bond was delivered to said railroad company, with all the said coupons attached thereto, in part payment for a subscription of
75 seventeen thousand dollars to the capital stock of said railroad company made by said Trustees of Brown Township in pursuance to a vote of the qualified electors of said township.

Plaintiff further says that said trustees levied and collected a tax upon the taxable property in said township and paid the interest coupons on said bond from the first day of January, 1854, up to and inclusive of the first day of January, 1858, being in all nine semi-annual payments of interest on said bond.

Plaintiff further says that she is the owner and holder of said bond and of the coupons for the annual payment of interest thereon from July 1st, 1858 to January 1st, 1871, inclusive, which said coupons are now and always have been attached to said bond.

Plaintiff says that after the execution and delivery of said bond to said railroad company as aforesaid, and in the year 1854 the said railroad company did endorse and deliver said bond and the coupons thereto attached to Brown, Collins, and Brown, and said Brown, Collins, and Brown afterwards endorsed and delivered said bond and coupons to William A. Collord, and William A. Collord afterwards endorsed and delivered said bond and coupons to the plaintiff, who now holds and owns the same.

The following is a true copy of said endorsements:

76 The Springfield, Mt. Vernon and Pittsburg Railroad Company, for a valuable consideration hereby assigns the within bond to Brown, Collins and Brown or assigns; and for value received as aforesaid hereby guarantees the final payment of this bond, principal and interest, on or before the first day of November, 1871.

By order of the directors of said company.

C. ANTHONY, *President.*

8TH JUNE, 1854.

For value received I assign the within bond and all benefit of the above guarantee to W. A. Collord.

BROWN, COLLINS AND BROWN.

For value received I assign the within bond and all benefit of the above guarantee to Annie Louis.

W. A. COLLORD.

And the plaintiff further states that said bond was purchased by said Brown, Collins and Brown, and by said Collord, in good faith for valuable consideration, before maturity of any of the coupons thereon now remaining unpaid, and that neither said railroad company, nor said Brown, Collins and Brown, nor said Collord had any notice of defences to said bond, if any there be, at the respective times of said endorsements to them.

Plaintiff further says that after the passage of said act of March
77 21st, 1850, at the next annual election held in the several townships of said county of Delaware, more than twenty days after the passage of said act, the county commissioners of said Delaware County were not authorized by the vote of said county to subscribe to the stock of said railroad company.

Plaintiff further says that since January, 1858, no interest has been paid on said bond, and that said bond has become due and payable, but that the defendants, though often requested, have neglected and refused to pay said bond, or the several instalments of interest accrued since January, 1858, and that there is due the plaintiff thereon from the defendants, the sum of five hundred dollars, with seven per cent. per annum interest, from October 1st, 1871, and twenty-seven instalments of semi-annual interest thereon as specified in said coupons thereto attached, and being a part thereof of seventeen dollars and fifty cents each, with interest on said instalments

at six per cent. per annum from their respective maturities, to wit, July 1st, 1858; January 1st and July 1st, 1859, and January and July first, in each of the years 1860, 1861, 1862, 1863, 1864, 1865, 1866, 1867, 1868, 1869, 1870, and 1871.

13. And for a thirteenth cause of action the plaintiff says, that on the 20th day of April, 1853, the defendants being thereunto duly authorized by an act of the general assembly of the State of Ohio, entitled "An act
78 to incorporate the Springfield and Mansfield Railroad Company," and passed March 21st, 1850, and an act entitled "An act regulating the mode of proceeding where county commissioners may be authorized by law to subscribe to the capital stock of railroads, turnpike roads or other incorporated companies in the State," and passed February 28th, 1846; and an act entitled "An act to authorize special elections, to decide the question of subscription to the Springfield and Mansfield Railroad by counties and townships," and passed March 25th, 1851, did execute and deliver to the Springfield, Mt. Vernon and Pittsburgh Railroad Company, being the same corporation mentioned in the said acts of the general assembly, as the Springfield and Mansfield Railroad Co., the name of said company having been so changed in accordance with law, a certain promissory note called a bond, but not under seal, for the sum of five hundred dollars, in the words and figures following, to wit:

No. 4.] UNITED STATES OF AMERICA, STATE OF OHIO. [$500.00.

Township of Brown, in Delaware County, seven per cent. loan.

Be it known that the Township of Brown, in Delaware County, in the State of Ohio, owes to the Springfield, Mt. Vernon and Pittsburgh Railroad Company, five hundred dollars, which sum the said Township
79 of Brown, promises to pay to the said Springfield, Mt. Vernon and Pittsburgh Railroad Company, or its assigns, at the office of the treasurer of said township, on the first day of October, A. D. 1871, and to pay the interest thereon, at the rate of seven per cent. per annum semi-annually, the first payment to be made on the first day of January, 1853, and on each first day of January and July thereafter, the said Township of Brown, however, reserving to the said township the right to pay the amount hereby secured to be paid at any time after the first day of October, A. D. 1860, at their option, they giving notice of the said day of payment, at least six months previous thereto, by advertisement published not less than four consecutive weeks, in a newspaper published in the county of Delaware aforesaid, and after the day of payment so advertised the interest thereon shall cease. This obligation is issued in part payment of a subscription of three hundred and forty shares of fifty dollars each, to the capital stock of the Springfield, Mt. Vernon and Pittsburgh Railroad Company, made by the said Township of Brown, in pursuance of the provisions of several acts of the general assembly of the State of Ohio, and of a vote of the qualified electors of said township of Brown, taken in pursuance thereof.

In testimony whereof the Trustees of Brown Township aforesaid have

hereunto set their hands and seals this twenty*th* day of April, A. D. 1853.

80 JOSEPH C. PORTER,
SAMUEL S. OLIVER,
JOHN P. BLACK,
Trustees of Brown Township.

Attest:
JASON MERRIHEW, *Township Clerk.*

Plaintiff further says that at the time said bond was executed and delivered as aforesaid said Porter, Oliver and Black were the duly elected and qualified trustees of said Brown Township, and said Merrihew was the duly elected and qualified township clerk. Plaintiff says that there were attached to said bond interest warrants or coupons numbered from one to thirty-eight, inclusive, for the semi-annual payment of interest each six months from January 1st, 1854, to July 1st, 1871, inclusive, each of said interest warrants being for the sum of seventeen dollars and fifty cents, one being in the form following, to wit, and the others varying only in the number of the warrant and time of maturity:

DELAWARE COUNTY, OHIO:

Brown Township interest warrant No. 12, for seventeen dollars and fifty cents, being for six months' interest on bond No. 4, payable on the first day of July, 1858, at the office of the treasurer of said township.
$17.50.] J. MERRIHEW, *Tp. Clerk.*

81 That said bond was delivered to said railroad company, with all the said coupons attached thereto, in part payment for a subscription of seventeen thousand dollars to the capital stock of said railroad company, made by said Trustees of Brown Township in pursuance to a vote of the qualified electors of said township.

Plaintiff further says that said trustees levied and collected a tax upon the taxable property in said township, and paid the interest coupons on said bond from the first day of January, 1854, up to and inclusive of the first day of January, 1858, being in all nine semi-annual payments of interest on said bond. Plaintiff further says that she is the owner and holder of said bond, and of the coupons for the annual payment of interest thereon from July 1st, 1858, to January 1st, 1871, inclusive, which said coupons are now and always have been attached to said bond.

Plaintiff says that after the execution and delivery of said bond to said railroad company as aforesaid, and in the year 1854, the said railroad company did endorse and deliver said bond and the coupons thereto attached to Brown, Collins and Brown, and that said Brown, Collins and Brown afterwards endorsed and delivered said bond and coupons to William A. Collord, and William A. Collord afterwards endorsed and delivered
82 said bond and coupons to the plaintiff, who now holds and owns the same.

The following is a true copy of said endorsements:

The Springfield, Mt. Vernon and Pittsburgh Railroad Company, for a valuable consideration, hereby assigns the within bond to Brown, Collins

and Brown, or assigns, and for value received, as aforesaid, hereby guarantees the final payment of this bond, principal and interest, on or before the first day of November, 1871.

By order of the directors of said company.

C. ANTHONY, *President.*

8TH JUNE, 1854.

For value received, I assign the within bond and all benefit of the above guarantee to W. A. Collord.

BROWN, COLLINS AND BROWN.

For value received, I assign the within bond and all benefit of the above guarantee to Annie Louis.

W. A. COLLORD.

And the plaintiff further states that said bond was purchased by said Brown, Collins and Brown, and by said Collord, in good faith for valuable consideration before maturity of any of the coupons thereon now remaining unpaid, and that neither said railroad company, nor said Brown, Collins and Brown, nor said Collord, had any notice of defences to said bond, if any there be, at the respective times of said endorsements to them.

83 Plaintiff further says that after the passage of said act of March 21st, 1850, at the next annual election held in the several townships of said county of Delaware, more than twenty days after the passage of said act, the county commissioners of said Delaware County were not authorized by the vote of said county to subscribe to the stock of said railroad company.

Plaintiff further says that since January, 1858, no interest has been paid on said bond, and that said bond has become due and payable, but that the defendants, though often requested, have neglected and refused to pay said bond, or the several instalments of interest accrued since January, 1858, and that there is due the plaintiff thereon from the defendants the sum of five hundred dollars, with seven per cent. per annum interest from October 1st, 1871, and twenty-seven instalments of semi-annual interest thereon, as specified in said coupons thereto attached, and being a part thereof, of seventeen dollars and fifty cents each, with interest on said instalments at six per cent. per annum from their respective maturities, to wit, July 1st, 1858, January 1st and July 1st, 1859, and January and July 1st in each of the years 1860, 1861, 1862, 1863, 1864, 1865, 1866, 1867, 1868, 1869, 1870, and 1871.

14. And for a fourteenth cause of action the plaintiff says that

84 on the 20th day of April, 1853, the defendants, being thereunto duly authorized by an act of the general assembly of the State of Ohio, entitled "An act to incorporate the Springfield and Mansfield Railroad Company," andpassed March 21st, 1850, and an act entitled "An act regulating the mode of proceeding where county commissioners may be authorized by law to subscribe to the capital stock of railroads, turnpike roads, or other incorporated companies in this State," and passed February 28th, 1846, and an act entitled "An act to authorize special elections to decide the question of subscription to the Springfield and Mansfield Railroad by counties and townships," and passed March 25th, 1851, did executed

and deliver to the Springfield, Mt. Vernon and Pittsburgh Railroad Company, being the same corporation mentioned in said acts of the general assembly as the Springfield and Mansfield Railroad Company, the name of said company having been so changed in accordance with law, a certain promissory note called a bond, but not under seal, for the sum of five hundred dollars, in the words and figures following, to wit:

No. 8.] UNITED STATES OF AMERICA, STATE OF OHIO. [$500.00.

Township of Brown, in Delaware County, seven per cent. loan.

85 Be it known that the Township of Brown, in Delaware County, in the State of Ohio, owes to the Springfield, Mt. Vernon and Pittsburgh Railroad Company five hundred dollars, which sum the said Township of Brown promises to pay to the said Springfield, Mt. Vernon and Pittsburgh Railroad Company, or its assigns, at the office of the treasurer of said township, on the first day of October, A. D. 1871, and to pay the interest thereon at the rate of seven per cent. per annum semi-annually, the first payment to be made on the first day of January, 1853, and on each first day of January and July thereafter; the said township of Brown, however, reserving to the said township the right to pay the amount hereby secured to be paid at any time after the first day of October, A. D. 1860, at their option, they giving notice of the said day of payment at least six months previous thereto by advertisement published not less than four consecutive weeks in a newspaper published in the county of Delaware aforesaid, and after the day of payment so advertised the interest thereon shall cease.

This obligation is issued in part payment of a subscription of three hundred and forty dollars each to the capital stock of the said Springfield, Mt. Vernon and Pittsburg Railroad Company, made by the said Township of Brown, in pursuance of the provisions of several acts of the 86 general assembly of the State of Ohio and of a vote of the qualified electors of said township of Brown taken in pursuance thereof.

In testimony whereof the Trustees of Brown Township aforesaid have hereunto set their hands and seals this 20th day of April, A. D. 1853.

JOSEPH C. PORTER,
SAMUEL S. OLIVER,
JOHN P. BLACK,
Trustees of Brown Township.

Attest:
JASON MERRIHEW, *Township Clerk.*

Plaintiff further says that at the time said bond was executed and delivered as aforesaid said Porter, Oliver, and Black were the duly elected and qualified trustees of said Brown Township, and said Merrihew was the duly elected and qualified township clerk. Plaintiff says that there were attached to said bond interest warrants or coupons, numbered from one to thirty-eight, inclusive, for the semi-annual payment of interest each six months from January 1st, 1854, to July 1, 1871, inclusive, each of said interest warrants being for the sum of seventeen dollars and fifty cents, one being in the form following, to wit, and the others varying only in the number of the warrant and time of maturity:

DELAWARE COUNTY, OHIO:

Brown Township interest warrant No. 12, for seventeen dollars
87 and fifty cents, being for six months' interest on bond No. 8, payable on the first day of July, 1858, at the office of the treasurer of said township.

$17.50.]

J. MERRIHEW, *Tp. Clerk.*

That said bond was delivered to said railroad company with all the said coupons attached thereto in part payment for a subscription of seventeen thousand dollars to the capital stock of said railroad company made by said Trustees of Brown Township in pursuance to a vote of the qualified electors of said township.

Plaintiff further says that said trustees levied and collected a tax upon the taxable property in said township and paid the interest coupons on said bond from the first day of January, 1854, up to and inclusive of the 1st day of January, 1858, being in all nine semi-annual payments of interest on said bond.

Plaintiff further says that she is the owner and holder of said bond and *for* the coupons for the annual payment of interest thereon from July 1st, 1858, to January 1st, 1871, inclusive, which said coupons are now and always have been attached to said bond.

Plaintiff says that after the execution and delivery of said bond to said railroad company as aforesaid, and in the year 1854, the said railroad company did endorse and deliver said bond and the coupons thereto attached
to Brown, Collins and Brown, and that said Brown, Collins and
88 Brown afterwards endorsed and delivered said bond and coupons to William A. Collord, and William A. Collord afterwards endorsed and delivered said bond and coupons to the plaintiff, who now holds and owns the same.

The following is a true copy of said endorsements:

The Springfield, Mt. Vernon and Pittsburg Railroad Company, for a valuable consideration, hereby assigns the within bond to Brown, Collins and Brown, or assigns, and for value received as aforesaid hereby guarantees the final payment of this bond, principal and interest, on or before the first day of November, 1871.

By order of the directors of said company.

C. ANTHONY, *President.*

8TH JUNE, 1854.

For value received, I assign the within bond and all benefit of the above guarantee to W. A. Collord.

BROWN, COLLINS AND BROWN.

For value received, I assign the within bond and all benefit of the above guarantee to Annie Louis.

W. A. COLLORD.

And the plaintiff further states that said bond was purchased by said Brown, Collins and Brown, and by said Collord, in good faith for valuable consideration before maturity of any of the coupons thereon now

89 remaining unpaid; and that neither said railroad company nor said Brown, Collins and Brown, nor said Collord, had any notice of defences to said bond, if any there be, at the respective times of said endorsements to them.

Plaintiff further says that after the passage of said act of March 21st, 1850, at the next annual election held in the several townships of said county of Delaware more than twenty days after the passage of said act, the county commissioners of said Delaware County were not authorized by the vote of said county to subscribe to the stock of said railroad company.

Plaintiff further says that since January, 1858, no interest has been paid on said bond, and that said bond has become due and payable, but that the defendants, though often requested, have neglected and refused to pay said bond or the several instalments of interest accrued since January, 1858, and that there is due the plaintiff thereon from the defendants the sum of five hundred dollars with seven per cent. per annum interest from October 1st, 1871, and twenty-seven instalments of semi-annual interest thereon, as specified in said coupons thereto attached, and being a part thereof, of seventeen dollars and fifty cents each, with interest on said instalments at six per cent. per annum from their respective maturities, to wit, July 1st, 1858, January 1st and July 1st, 1859, and January and July 1st in each of the years 1860, 1861, 1862, 1863, 1864, 1865, 1866, 1867, 1868, 1869, 1870, and 1871.

90 15. And for a fifteenth cause of action the plaintiff says that on the 20th day of April, 1853, the defendants being duly authorized by an act of the general assembly of the State of Ohio, entitled "An act to incorporate the Springfield and Mansfield Railroad Company," and passed March 21st, 1850, and and act entitled "An act regulating the mode of proceeding where county commissioners may be authorized by law to subscribe to the capital stock of railroads, turnpike roads, or other incorporated companies in this State," and passed February 28th, 1846, and an act entitled " An act to authorize special elections to decide the question of subscription to the Springfield and Mansfield Railroad Company," passed March 21st, 1851, did execute and deliver to the Springfield, Mt. Vernon and Pittsburgh Railroad Company, being the same corporation mentioned in said act of the general assembly as the Springfield and Mansfield Railroad Company, the name of said company having been so changed in accordance with law, a certain promissory note called a bond, but not under seal, for the sum of five hundred dollars, in the words and figures following, to wit:

No. 9.] UNITED STATES OF AMERICA, STATE OF OHIO. [$500.00.

Township of Brown, in Delaware County, seven per cent. loan.

Be it known that the Township of Brown, in Delaware County, in State of Ohio, owes to the Springfield, Mt. Vernon and Pittsburgh Rail-
91 road Company five hundred dollars, which sum the said Township of Brown promises to pay to the said Springfield, Mt. Vernon and Pittsburgh Railroad Company, or its assigns, at the office of the treasurer of said township, on the first day of October, A. D. 1871, and to pay the interest thereon at the rate of seven per cent. per annum semi-annually,

the first payment to be made on the first day of January, 1853, and on each first day of January and July thereafter, the said Township of Brown, however, reserving to the said township the right to pay the amount hereby secured to be paid at any time after the first day of October, A. D. 1860, at their option, they giving notice of the said day of payment at least six months previous thereto by advertisement published not less than four consecutive weeks in a newspaper published in the county of Delaware aforesaid, and after the day of payment so advertised the interest thereon shall cease.

This obligation is issued in part payment of a subscription of three hundred and forty shares of fifty dollars each to the capital stock of the said Springfield, Mt. Vernon and Pittsburgh Railroad Company made by the said Township of Brown in pursuance of the provisions of several acts of the general assembly of the State of Ohio, and of a vote of the qualified electors of said township of Brown taken in pursuance thereof.

In testimony whereof the Trustees of Brown Township aforesaid have hereunto set their hands and seals this 20th day of April, A. D. 1853.

92 JOSEPH C. PORTER,
SAMUEL S. OLIVER,
JOHN P. BLACK,
Trustees of Brown Township.

Attest:
JASON MERRIHEW, *Township Clerk.*

Plaintiff further says that at the time said bond was executed and delivered as aforesaid said Porter, Oliver and Black were the duly elected and qualified trustees of said Brown Township, and said Merrihew was the duly elected and qualified township clerk.

Plaintiff says that there was attached to said bond interest warrants or coupons, numbered from 1 to 38, inclusive, for the semi-annual payment of interest, each six months from January 1st, 1854, to July 1st 1871, inclusive, each of said interest warrants being for the sum of seventeen dollars and fifty cents, one being in the form following, to wit, the others varying only in the number of the warrant and time of maturity:

DELAWARE COUNTY, OHIO.

Brown Township interest warrant No. 12, for seventeen dollars and fifty cents, being for six months' interest on bond No. 9, payable on the 1st day of July, 1858, at the office of the treasurer of said township.

$17.50.] J. MERRIHEW, *Tp. Clerk.*

93 That said bond was delivered to said railroad company with all the said coupons attached thereto, in part payment for a subscription of seventeen thousand dollars to the capital stock of said railroad company, made by said trustees of Brown Township in pursuance to a vote of the qualified electors of said township.

Plaintiff further says that said trustees levied and collected a tax upon the taxable property of said township and paid the interest coupons on said bond from the first day of January, 1854, up to and inclusive of the

first day of January, 1858, being in all nine semi-annual payments of interest on said bond.

Plaintiff further says that she is the owner and holder of said bond and of the coupons for the annual payment of interest thereon from July 1st, 1858, to January 1st, 1871, inclusive, which said coupons are now and always have been attached to said bond.

Plaintiff says that after the execution and delivery of said bond to said railroad company as aforesaid, and in the year 1854, the said railroad company did endorse and deliver said bond and the coupons thereto attached to Brown, Collins and Brown, and that said Brown, Collins and Brown afterwards endorsed and delivered said bond and coupons to William A. Collord, and William A. Collord afterwards endorsed and delivered said bond and coupons to the plaintiff, who now holds and owns the same.

The following is a true copy of said endorsements:

94 The Springfield, Mt. Vernon and Pittsburgh Railroad Company, for a valuable consideration, hereby assigns the within bond to Brown, Collins and Brown, or assigns, and for value received as aforesaid hereby guarantees the final payment of this bond, principal and interest, on or before the first day of November, 1871.

By order of the directors of said company.

C. ANTHONY, *President.*

8TH JUNE, 1854.

For value received, I assign the within bond, and all benefit of the above guarantee to W. A. Collord.

BROWN, COLLINS AND BROWN.

For value received, I assign the within bond and all benefit of the above guarantee, to Annie Louis.

W. A. COLLORD.

And the plaintiff further states that said bond was purchased by said Brown, Collins and Brown, and Collord in good faith, for valuable consideration, before maturity of any of the coupons thereon now remaining unpaid, and that neither said railroad company, nor said Brown, Collins and Brown, nor said Collord had any notice of defences to said bond, if any there be, at the respective times of said endorsements to them.

95 Plaintiff further says that after the passage of said act of March 21st, 1850, at the next annual election held in the several townships of said county of Delaware, more than twenty days after the passage of said act, the county commissioners of said Delaware County were not authorized by the vote of said county to subscribe to the stock of said railroad company.

Plaintiff further says that since January, 1858, no interest has been paid on said bond, and that said bond has become due and payable, but that the defendants, though often requested, have neglected and refused to pay said bond or the several instalments of interest accrued since January, 1858, and that there is due the plaintiff thereon from the defendants the sum of five hundred dollars, with seven per cent. per annum interest from October 1st, 1871, and twenty-seven instalments of semi-annual interest thereon, as specified in said coupons thereto attached, and being a part thereof, of

seventeen dollars and fifty cents each, with interest on said instalments at six per cent. per annum from their respective maturities, to wit, July 1st, 1858, January 1st, and July 1st, 1859, and January and July 1st, in each of the years, 1860, 1861, 1862, 1863, 1864, 1865, 1866, 1867, 1868, 1869, 1870, and 1871.

16. And for a sixteenth cause of action the plaintiff says that on the 20th day of April, 1853, the defendants, being thereunto duly au-
96 thorized by an act of the general assembly of the State of Ohio, entitled "An act to incorporate the Springfield and Mansfield Railroad Company,' 'and passed March 21st, 1850, and an act entitled "An act regulating the mode of proceeding where county commissioners may be authorized by law to subscribe to the capital stock of railroads, turnpike roads, or other incorporated companies in this State," and passed February 28th, 1846, and an act entitled "An act to authorize special elections to decide the question of subscription to the Springfield and Mansfield Railroad by counties and townships," and passed March 25th, 1851, did execute and deliver to the Springfield, Mt. Vernon and Pittsburgh Railroad Company, being the same corporation mentioned in said act of the general assembly as the Springfield and Mansfield Railroad Company, the name of said company having been so changed in accordance with law, a certain promissory note called a bond, but not under seal, for the sum of five hundred dollars, in the words and figures following, to wit:

No. 12.] UNITED STATES OF AMERICA, STATE OF OHIO. [$500.00.

Township of Brown, in Delaware County, seven per cent. loan.

Be it known, that the Township of Brown, in Delaware County, in the State of Ohio, owes to the Springfield, Mt. Vernon and Pittsburgh Railroad Company five hundred dollars, which sum the said Township
97 of Brown promises to pay to the said Springfield, Mt. Vernon and Pittsburgh Railroad Company or its assigns, at the office of the treasurer of said township, on the first day of October, A. D. 1871, and to pay the interest thereon at the rate of seven per cent. per annum semi-annually, the first payment to be made on the first day of January, 1853, and on each first day of January and July thereafter, the said Township of Brown, however, reserving to the said township the right to pay the amount hereby secured to be paid at any time after the first day of October, A. D. 1860, at their option, they giving notice of the said day of payment at least six months previous thereto, by advertisement published not less than four consecutive weeks in a newspaper published in the county of Delaware aforesaid, and after the day of payment so advertised the interest thereon shall cease. This obligation is issued in part payment of a subscription of three hundred and forty shares of fifty dollars each to the capital stock of the said Springfield, Mt. Vernon and Pittsburgh Railroad Company, made by the said Township of Brown in pursuance of the provisions of several acts of the general assembly of the State of Ohio, and of a vote of the qualified electors of said township of Brown, taken in pursuance thereof.

In testimony whereof the Trustees of Brown Township aforesaid,

have hereunto set their hands and seals this 20th day of April, A. D. 1853.

98 JOSEPH C. PORTER,
SAMUEL S. OLIVER,
JOHN P. BLACK,
Trustees of Brown Township.

Attest:
JASON MERRIHEW, *Township Clerk.*

Plaintiff further says, that at the time said bond was executed and delivered as aforesaid, said Porter, Oliver and Black were the duly elected and qualified trustees of Brown Township, and said Merrihew was the duly elected and qualified township clerk.

Plaintiff says that there were attached to said bond interest warrants or coupons, numbered from one to thirty-eight, inclusive, for the semi-annual payment of interest, each six months from January 1st, 1854, to July 1st, 1871, inclusive, each of said interest warrants being for the sum of seventeen dollars and fifty cents, one being in the form following, to wit, and the other varying only in the number of the warrant and time of maturity.

DELAWARE COUNTY, OHIO:

Brown township interest warrant No. 12, for seventeen dollars and fifty cents, being for six months' interest on bond No. 12, payable on the first day of July, 1858, at the office of the treasurer of said township.
$17.00.] J. MERRIHEW, *Tp. Clerk.*

That said bond was delivered to said railroad company, with all
99 the said coupons attached thereto, in part payment for a subscription of seventeen thousand dollars to the capital stock of said railway company, made by said Trustees of Brown Township, in pursuance to a vote of the qualified electors of said township.

Plaintiff further says that said trustees levied and collected a tax upon the taxable property in said township, and paid the interest coupons on said bond from the first day of January, 1854, up to and inclusive of the first day of January, 1858, being in all nine semi-annual payments of interest on said bond.

Plaintiff further says that she is the owner and holder of said bond, and of the coupons for the annual payment of interest thereon, from July 1st, 1858, to January 1st, 1871, inclusive, which said coupons are now and always have been attached to said bond.

Plaintiff says that after the execution and delivery of said bond to said railroad company as aforesaid, and in the year 1854, the said railroad company did endorse and deliver said bond and the coupons thereto attached to Brown, Collins and Brown, and that said Brown, Collins and Brown, afterwards endorsed and delivered said bond and coupons to William A. Collord, and William A. Collord afterwards endorsed and delivered said bond and coupons to the plaintiff, who now holds and owns the same.

The following is a true copy of said endorsements:

100 The Springfield and Mt. Vernon and Pittsburgh Railroad Company, for a valuable consideration, hereby assigns the within bond

to Brown, Collins and Brown, or assigns, and for value received as aforesaid hereby guarantees the final payment of this bond principal and interest, on or before the first day of November, 1871.

By order of the directors of said company.

C. ANTHONY, *President.*

8TH JUNE, 1854.

For value received, I assign the within bond, and all benefit of the above guarantee, to W. A. Collord.

BROWN, COLLINS AND BROWN.

For value received, I assign the within bond, and all benefit of the above guarantee, to Annie Louis.

W. A. COLLORD.

And the plaintiff further states that said bond was purchased by said Brown, Collins and Brown, and by Collord in good faith, for valuable consideration, before maturity of any of the coupons thereon now remaining unpaid, and that neither said railroad company nor said Brown, Collins and Brown, nor said Collard had any notice of defences to said bond, if any there be, at the respective times of said endorsements to them.

Plaintiff further says that after the passage of said act of March 21st, 1850, at the next annual election held in the several townships of said county of Delaware, more than twenty days after the passage of
101 said act, the county commissioners of said Delaware County were not authorized by the vote of said county to subscribe to the stock of said railroad company.

Plaintiff further says that since January, 1858, no interest has been paid on said bond, and that said bond has become due and payable, but that the defendants, though often requested, have neglected and refused to pay said bond or the several instalments of interest accrued since January, 1858, and that there is due the plaintiff thereon from the defendants the sum of five hundred dollars with seven per cent. per annum interest from October 1st, 1871, and twenty-seven instalments of semi-annual interest thereon, as specified in said coupons thereto attached, and being a part thereof, of seventeen dollars and fifty cents each, with interest on said instalments at six per cent. per annum from their respective maturities, to wit, July 1st, 1858, and January 1st and July 1st, 1859, and January and July 1st in each of the years 1860, 1861, 1862, 1863, 1864, 1865, 1866, 1867, 1868, 1869, 1870, and 1871.

11. And for a seventeenth cause of action the plaintiff says that on the 20th day of April, 1853, the defendants being thereunto duly authorized by an act of the general assembly of the State of Ohio entitled "An act to incorporate the Springfield and Mansfield Railroad Company," and passed March 21st, 1850, and an act entitled "An act regulating the mode
102 of proceeding where county commissioners may be authorized by law to subscribe to the capital stock of railroads, turnpike roads, or other incorporated companies in this State," and passed February 28th, 1846, and an act entitled "An act authorizing special elections to decide the question of subscription to the Springfield and Mansfield Railroad by counties and townships," and passed March 25th, 1851, did execute and deliver to the Springfield, Mt. Vernon and Pittsburg Railroad Company,

being the same corporation mentioned in said acts of the general assembly as the Springfield and Mansfield Railroad Company, the name of said company having been so changed in accordance with law, a certain promissory note called a bond, but not under seal, for the sum of five hundred dollars, in the words and figures following, to wit:

No. 6.] UNITED STATES OF AMERICA, STATE OF OHIO. [$500.00.

Township of Brown, in Delaware County, seven per cent. loan.

Be it known that the Township of Brown, in Delaware County, in the State of Ohio, owes to the Springfield, Mt. Vernon and Pittsburgh Railroad Company five hundred dollars, which sum the said Township of Brown promises to pay to the said Springfield, Mt. Vernon and Pittsburgh Railroad Company, or its assigns, at the office of the treasurer of said township on the first day of October, A. D. 1871, and to pay the interest thereon at the rate of seven per cent. per annum semi-annually, the first payment to be made on the first day of January, 1853, and on each first day of January and July thereafter, the said Township of Brown, however, reserving to the said township the right to pay the amount hereby secured to be paid at any time after the first day of October, A. D. 1860, at their option, they giving notice of the said day of payment at least six months previous thereto, by advertisement published not less than four consecutive weeks in a newspaper published in the county of Delaware aforesaid, and after the day of payment so advertised the interest thereon shall cease. This obligation is issued in part payment of a subscription of three hundred and forty shares of fifty dollars each to the capital stock of the said Springfield, Mt. Vernon and Pittsburgh Railroad Company, made by the said Township of Brown in pursuance of the provisions of several acts of the general assembly of the State of Ohio, and of a vote of the qualified electors of said Township of Brown taken in pursuance thereof.

103

In testimony whereof the Trustees of Brown Township aforesaid have hereunto set their hands and seals this 20th day of April, A. D. 1853.

JOSEPH C. PORTER,
SAMUEL S. OLIVER,
JOHN P. BLACK,
Trustees of Brown Township.

104 Attest:

JASON MERRIHEW, *Township Clerk.*

Plaintiff further says that at the time said bond was executed and delivered as aforesaid said Porter, Oliver, and Black were the duly elected and qualified trustees of said Brown Township, and said Merrihew was the duly elected and qualified township clerk. Plaintiff says that there were attached to said bond interest warrants or coupons numbered from one to thirty-eight, inclusive, for the semi-annual payment of interest each six months from January 1st, 1854, to July 1st, 1871, inclusive, each of said interest warrants being for the sum of seventeen dollars and fifty cents, and being in the form following, to wit, and the others varying only in the number of the warrant and time of maturity:

DELAWARE COUNTY, OHIO:

Brown Township interest warrant No. 12, for seventeen dollars and fifty cents, being for six months' interest on bond No. 6, payable on the first day of July, 1858, at the office of the treasurer of said township. $17.50.]

J. MERRIHEW, *Tp. Clerk.*

That said bond was delivered to said railroad company, with all the said coupons attached thereto, in part payment for a subscription of seventeen thousand dollars to the capital stock of said railroad company made by said Trustees of said Brown Township in pursuance to a vote of the qualified electors of said township.

Plaintiff further says that said trustees levied and collected a tax upon the taxable property in said township, and paid the interest coupons on said bond from the first day of January, 1854, up to and inclusive of the first day of January, 1858, being in all nine semi-annual payments of interest on said bond.

Plaintiff further says that she is the owner and holder of said bond and the coupons for the annual payment of interest thereon from July 1st, 1858, to January 1st, 1871, inclusive, which said coupons are now and always have been attached to said bond.

Plaintiff says that after the execution and delivery of said bond to said railroad company, as aforesaid, and in the year 1854, the said railroad company did endorse and deliver said bond and the coupons thereto attached to William A. Collord, and that said William A. Collord afterwards endorsed and delivered said bond and the coupons to the plaintiff, who now owns and holds the same.

The following is a true copy of said endorsements:

The Springfield, Mt. Vernon and Pittsburgh Railroad Company, for a valuable consideration, hereby assigns the within bond to William A. Collord or assigns, and for value received as aforesaid hereby guarantees the final payment of this bond, principal and interest, on or before the first day of November, 1871.

By order of the directors of said company.

C. ANTHONY,
President.

For value received, I assign the within bond and all benefit of the above guarantee to Annie Louis.

WILLIAM A. COLLORD.

And the plaintiff further states that said bond was purchased by said William A. Collord in good faith for valuable consideration before maturity of any of the coupons thereon now remaining unpaid, and that neither said railroad company nor said William A. Collord had any notice of defences to said bond, if any there be, at the respective times of said endorsements to them.

Plaintiff further says that after the passage of said act of March 21st, 1850, at the next annual election held in the several townships of said county of Delaware, more than twenty days after the passage of said act, the county commissioners of said Delaware County were not authorized by the vote of said county to subscribe to the stock of said railroad company.

Plaintiff further says that since January, 1858, no interest has
107 been paid on said bond, and that said bond has become due and payable, but that the defendants, though often requested, have neglected and refused to pay said bond or the several instalments of interest accrued since January, 1858, and that there is due the plaintiff thereon from the defendants the sum of five hundred dollars, with seven per cent. interest from October 1st, 1871, and twenty-seven instalments of semi-annual interest thereon, as specified in said coupons thereto attached, and being a part thereof, of seventeen dollars and fifty cents each, with interest on said instalments at six per cent. per annum from their respective maturities, to wit, July 1st, 1858, January 1st and July 1st, 1859, and January and July first in each of the years 1860, 1861, 1862, 1863, 1864, 1865, 1866, 1867, 1868, 1869, 1870, and 1871.

Therefore the plaintiff prays judgment against the defendants for the recovery of thirteen thousand five hundred dollars, with interest at the rate of seven per cent. per annum from October 1st, 1871, and for two further sums of two hundred and seventy-seven dollars and fifty cents each, with interest at six per cent. per annum from July 1st, 1858, and January 1st, 1859, and for twenty further sums of four thousand and seventy-two dollars and fifty cents each, with interest at the rate of six per cent. per annum from July 1st, 1859, and January and July
108 1st in each of the years 1860, 1861, 1862, 1863, 1864, 1865, 1866, 1867, 1868, 1869, 1870, and 1871, and for each other and further relief as in equity and good conscience the plaintiff may prove entitled to.

HOADLY, JOHNSON AND COLSTON,
WM. H. PUGH,
Attorneys for Plaintiff.

UNITED STATES OF AMERICA,
Southern District of Ohio:

Edgar M. Johnson, being duly sworn, says that he is the attorney in fact and at law of the plaintiff, Mrs. Annie Louis, who is absent from the United States and a non-resident thereof, and is a resident and citizen of the United Kingdom of Great Britain and Ireland, and that he believes the statements in the foregoing petition to be true.

EDGAR M. JOHNSON.

Subscribed in my presence and sworn to before me this 17th day of June, 1879.

A. W. GOLDSMITH,
Notary Public, Hamilton County, Ohio.

109 Circuit court of the United States, sixth circuit and northern district of Ohio, western division.

ANNIE LOUIS, AN ALIEN, AND CITIZEN OF THE United Kingdom of Great Britain and Ireland, plaintiff,

vs.

THE TRUSTEES OF BROWN TOWNSHIP, OF DELAWARE County, Ohio, defendants.

The clerk will please issue summons in the above-entitled action endorse' suit brought for the recovery of money only.

Amount claimed, $135.00, with interest at the rate of seven per cent. per annum from October 1st, 1871, and for two further sums of $297.50, with interest at six per cent. per annum from July 1st, 1858, and January 1st, 1859, and for twenty further sums of $472.50 each, with interest at the rate of six per cent. per annum from July 1st, 1859, and January and July 1st in each of the years 1860, 1861, 1862, 1863, 1864, 1865, 1866, 1867, 1868, 1869, 1870, and 1871.

HOADLY, JOHNSON, AND COLSTON,
WM. H. PUGH,
Attorneys for Plaintiff.

To A. J. RICKS, Esq., *Clerk.*
JUNE 18th, 1879.
Filed June 19th, 1879.

110 THE UNITED STATES OF AMERICA,
Northern District of Ohio, Western Division, ss:

The President of the United States of America to the marshal of the northern district of Ohio, greeting:

You are hereby commanded to notify the Trustees of Brown Township, Delaware County, Ohio, that they have been sued by Annie Louis in the circuit court of the United States within and for the said district, and that unless they answer by the 19th day of July, A. D. 1879, the petition of the said plaintiff against them filed in the clerk's office of said court, at Toledo, in said division and district, such petition will be taken as true, and judgment will be rendered accordingly.

You will make due return of this summons on the 30th day of June, A. D. 1879.

Witness the honorable Morrison R. Waite, Chief Justice of the United States, this 19th day of June, A. D. 1879, and in the 103rd year of the Independence of the United States of America.

A. J. RICKS, *Clerk,*
By J. S. CASE, *Deputy Clerk.*

Returnable 2d Monday after issued. Ans. by 3d Saturday after return day.

111 (Indorsed:) No. 107. United States circuit court, northern district of Ohio. Annie Louis vs. The Trustees of Brown Township, Del. Summons. Amount claimed, $13,500.00, with interest at the rate of seven per cent. per annum from October 1st, 1871, and for two further sums of $297.50 with interest at six per cent. per annum from July 1st, 1858, and January 1st, 1859, and for twenty further sums of $472.50 each, with interest at the rate of six per cent. per annum from July 1st, 1859, and January and July 1st in each of the years 1860, 1861, 1862, 1863, 1864, 1865, 1866, 1867, 1868, 1869, 1870, and 1871. Returnable June 30th, 1879. Rule for answer July 19th, 1879. Returned and filed June 25th, 1879. O. T. Case, deputy clerk. Hoadly Johnson and Colston, plaintiff's attorney.

W. A. Collard has acknowledged himself security for all costs for which the plaintiff may be liable in this suit.

O. T. CASE, *Dep. Clk.*

NORTHERN DISTRICT OF OHIO, *ss:*

On the 21st day of June, 1879, I made due service of this writ at Brown Township, Delaware County, Ohio, by leaving a true and duly certified copy thereof at the usual place of abode of each of the three following-named persons, to wit, John E. Kelberry, Lyman M. Masters, and W. H. Gregg, said persons being each one of the Trustees of Brown Township, Delaware County, Ohio, and none of said persons could be found.

W. B. PRENTICE, *U. S. Marshal,*
By C. A. PRENTICE, *Dep.*

112 *Answer.*

In the circuit court of the United States for the sixth circuit and northern district of Ohio, western division.

ANNIE LEWIS, AN ALIEN, CITIZEN OF THE United Kingdom of Great Britain and Ireland, plaintiff,
vs.
THE TRUSTEES OF BROWN TOWNSHIP, DELAWARE County, citizens of the State of Ohio, defendants.
} Answer.

DEFENSE No. 1.—And now comes the defendants, The Trustees of Brown Township, and for their first defense to the petition of the plaintiff say that said plaintiff is not the owner and holder of the said bonds and coupons set forth in the several causes of action in her petition; and they deny that said Richard B. Hopple and W. A. Collord, or either, "for value received, did assign said bonds and coupons, and the benefit of the guarantee, or either of them," as said plaintiff has in her said several causes of action in her petition set forth; and they say that said Richard B. Hopple and W. A. Collard are now, and were at the commence-
113 ment of this suit, and at the time of said pretended transfer and assignments by them in said petition respectively alleged to have been made to said Annie Louis, citizens of the State of Ohio, and that said pretended assignments and transfers to said plaintiff were without consideration, and the said Annie Louis is, by collusion with said Richard B. Hopple and said W. A. Collard, merely a nominal plaintiff in this action, and said pretended assignments and transfers were made for the sole purpose of giving this court jurisdiction of said supposed causes of action, and of depriving the courts of the State of Ohio of jurisdiction of the same, when in fact the real owners and holders of said pretended bonds and coupons are said Richard B. Hopple and said W. A. Collard, respectively, and not said Annie Louis, as set forth in said petition.

DEFENSE No. 2.—Said defendants, for a second and further defense, say: Said pretended bonds and coupons set out in the petition issued by said Trustees of Brown Township were issued by said Trustees of Brown Township payable to the said Springfield and Mansfield Railroad Company, the name of which was changed to the Springfield, Mt. Vernon and Pittsburgh Railroad Company, or its assigns, bearing interest at seven per

cent., payable semi-annually, represented by coupons attached thereto.

And said bonds and coupons were issued by said trustees under
114 the pretense of paying for a subscription by said trustees for said township to the capital stock of said railroad company to the amount of seventeen thousand dollars, made by them, as they claimed and pretended, under and by virtue of the vote of the electors of said township at a special election held August 30th, 1851, and the following sections of the acts of the general assembly of the State of Ohio:

An act passed by the general assembly of the State of Ohio, on the 21st day of March, in the year A. D. 1850, entitled "An act (see vol. 48 local Ohio laws, page 294) to incorporate the Springfield and Mansfield Railroad Company," the fourth, fifth, and sixth section, of which read as follows, viz:

"SECTION 4. The county commissioners of any county through which said railroad may be located shall be, and they are hereby, authorized to subscribe to the capital stock of said company, any sum not exceeding fifty thousand dollars, and to pay the same they shall have power to borrow any sum of money, not exceeding the amount so subscribed, at a rate of interest not exceeding seven per centum per annum, payable semi-annually in advance, and for the final payment of the principal and interest of said sum so subscribed or borrowed they are hereby authorized to levy and collect annually such taxes as, together with the tolls arising from said stock, will pay at such time or times as may be agreed on said
115 money so borrowed or subscribed, with interest thereon and the incidental charges.

"SECTION 5. If the commissioners of any county through which said railroad shall pass shall not be authorized by the vote of said county to subscribe stock to said road, the trustees of any township through which said road may be located shall be, and they are hereby, authorized to subscribe any sum of money, not exceeding fifty thousand dollars, to the capital stock of said company, and provide for the payment of said stock in the same manner that county commissioners aforesaid are authorized; provided, that the total amount which may be subscribed to the capital stock of said company by any county and the townships therein, shall not exceed one hundred thousand dollars.

"SECTION 6. No subscription shall be made by the county commissioners of any county or the trustees of any township through which said road may be located until a vote of the qualified voters of such county or township has been declared in favor of such subscription in the manner pointed out in an act regulating the mode of proceeding, when county commissioners may be authorized by law to subscribe to the capital stock of railroads, turnpike roads, or other incorporated companies in this State, passed February twenty-eighth, eighteen hundred and forty-eight."

And defendants further say that the first section of an act passed 28th 1846, (referred to in said sec. 6), was as follows:

116 "SECTION 1. That whenever the commissioners of any county in this State shall hereafter be authorized to subscribe to the capital stock of any railroad, township road, or other incorporated company in the State it shall be the duty of said county commissioners to give at least twenty days' notice, in one or more newspapers printed and of general

circulation in the county authorized to make such subscription, to the qualified voters of said county to vote at the next annual election to be held in the several township (and wards, if any there be) in said county for or against the subscription as aforesaid, and if a majority of the electors aforesaid voting at said election for or against a subscription as aforesaid shall be in favor of the same such authorized subscription may be made" (as by reference to said act will fully appear.)

And the said defendants further aver that afterwards, to wit, on the 25th day of March, A. D. 1851, the general assembly of said State of Ohio passed an act entitled "An act to authorize special elections to decide the question of subscription to the Springfield and Mansfield Railroad by counties and townships" (see vol. 49, Laws of Ohio, page 548), which said act is as follows:

"SECTION 1. That the county commissioners of the several counties through or into which the Springfield and Mansfield Railroad shall be located are hereby authorized to cause the question of subscription
117 to the capital stock of said railroad by county commissioners provided for in the act to incorporate said company (passed March 21st, 1850) to be submitted to the qualified voters of their respective counties at a special election to be by them called for that purpose at any time hereafter, having first given twenty days' previous notice.

"SECTION 2. If the commissioners of any of the counties aforesaid shall not be authorized by the vote as aforesaid to subscribe to the capital stock of said company on behalf of their respective counties, then, and in that case, the question of subscription by township trustees provided for in the said act incorporating said railroad company shall be submitted to the people of their respective townships at a special election to be called as provided for in the first section of this act.

"SECTION 3. That said elections shall be conducted, in all respects, in the same manner provided for in said act incorporating said railroad company, except as herein modified by this act."

Defendants say that said Trustees of Brown Township had no power or authority for making said pretended subscription or issuing said pretended bonds and coupons except such as was confer'ed by said section of said acts aforesaid.

Defendants further aver that long before the said pretended bonds and coupons were issued by said trustees, to wit, on or about the 17th day of June, 1851, the electors of Delaware County, at a special election then
118 held in said county, under and by virtue of said acts of the general assembly of the State of Ohio and their amendments, the question then being submitted to said electors, voted in favor of a subscription by said Delaware County to the capital stock of said railroad company to the amount of fifty thousand dollars, and on the fourth day of August, 1851, the commissioners of said county, by virtue of said acts of the general assembly, and by the authority given them by the voters of said electors at said special election, did subscribe for said county fifty thousand dollars to the capital stock of said railroad company, and issued the bonds of said county in payment thereof, and these defendants deny that after the passage of the act of 1850, at the next annual election held in the several townships of said county of Delaware, more than 20 days after the passage of said act, the county commissioners of said Delaware County were

not authorized by the vote of said county to subscribe to the stock of said railroad company.

And defendants aver that the contingency upon which said Trustees of Brown Township were authorized to subscribe or issue bonds in payment of their subscription to the capital stock of said company did not arise, and that all of their action in regard to said subscription, and the issuing of said pretended bonds and coupons, was void in law and in fact, and created no obligation in the hands of said trustees, nor their as-
119 signs, of all of which said assigns had full knowledge, and these defendants deny that the Trustees of Brown Township levied and collected a tax upon the taxable property in said township, and paid the interest coupons on said bonds from the first day of January. A. D. 1854, up to and inclusive of the first day of January, 1859, or any part thereof, and they deny that the assignees of said bonds and coupons had no notice of defense to said bonds and coupons.

DEFENSE No. 3. Said defendants for a further and third defense say, said plaintiff ought not to have her said action upon her said several causes of action in her petition set forth against them, because they say that heretofore, to wit, on the 18th day of October, A. D. 1871, a suit was commenced in the court of common pleas in the county of Delaware, and State of Ohio, wherein one Hiram Hiple was plaintiff, and the Trustees of Brown Township, Delaware County, Ohio, (viz: Robert G. McMasters, Andrew Finley and William Atkinson, as trustees of Brown Township in the county of Delaware, and State of Ohio;) William Heath, Richard Hopple, Peter S. Engard, as the administrators of the estate of Daniel Collins, deceased, Seymour Scott, W. A. Collard, James E. Brown, Ann Sweitzer, as administratrix of the estate of Daniel Collins,
120 deceased, and William K. Thrall were defendants, and such proceedings were had in said suit that afterwards and by leave of said court of common pleas of Delaware County first had and obtained, said plaintiff so amended his petition as to set forth a complaint aganist the Trustees of Brown Township, Delaware County aforesaid; that he the plaintiff had the legal title to and was seized in fee simple of and to, and was in the peaceable possession of certain real estate situate in said township of Brown, county of Delaware and State of Ohio, and describing the same therein by metes and bounds, and alleging that all of said defendants in said suit (including the defendants Richard B. Hopple and W. A. Collard, who are the same persons mentioned in plaintiff's petition, and claimed by the plaintiff to have assigned and transferred to her the bonds and coupons set forth in her several causes of action in her petition set forth), and each of them set up and claimed some title and interest in and to said real estate adverse to the interest, estate, and title of the plaintiff, and averring that the interest claimed by said defendants and each of them grew out of a certain pretended mortgage upon said premises to secure the payment of certain pretended bonds and coupons issued by the Trustees of said Brown Township, Delaware County, Ohio (being the same identical bonds and coupons set out in said plaintiff's petition in
121 her several causes of action therein set forth), and as will hereinafter more fully appear, and setting forth that said mortgage had been executed in pursuance of an agreement between one George Baker and others and the Trustees of Brown Township, Delaware County, which agreement was in writing, and that by the terms of the same it was agreed

by said George Baker and others that if the qualified electors of the Township of Brown, county of Delaware, would authorize the trustees of said township to subscribe $17,000.00 to the capital stock of the Springfield & Mt. Vernon Railroad Company, that they would secure the payment of the principal and interest as the same became due, &c., and setting forth that said mortgage was executed to secure said agreement, the said trustees having subscribed $17,000 to the capital stock of said railroad and issued the bonds and coupons of said township therefor, and setting forth that said pretended bonds and coupons were issued by said Trustees of Brown Township under pretense of paying for a subscription by said trustees for said township to the capital stock of said company, and setting forth the act of the general assembly of the State of Ohio, entitled "An act to incorporate the Springfield and Mansfield Railroad Company," and passed March 21st, 1850, and an act entitled, "An act regulating the mode of proceeding where county commissioners may be authorized
122 by law to subscribe to the capital stock of railroads, turnpike companies, &c.," passed February 28th, 1846, and an act to authorize special elections, passed March 25th, 1851 (being the same acts referred to in plaintiff's petition), and alleging that under and by virtue of said acts of the general assembly of the State of Ohio, said trustees of Brown Township were not authorized to subscribe or issue bonds in payment of their subscription to the capital stock of said railroad company, and that said bonds and coupons were void in law, and asking for the cancellation of said mortgage upon the record, and that said pretended bonds and coupons might be declared null and void, &c. And afterwards, to wit, on the 2nd day of April, A. D. 1872, the defendants, the said Richard B. Hopple, did in said suit in said court of common pleas, in and for the county of Delaware aforesaid, file his answer and cross-petition, and subsequently an amendment to his cross-petition, by leave of the court, setting forth therein the said acts of the general assembly of the State of Ohio that were set forth in the plaintiff Hiram Hipple's amended petition, and the said acts set out by the plaintiff herein, and averring that by the authority of said acts, and by virtue of the direction of the majority of said electors expressed at a special election, held by the qualified electors of said township on the 30th day of August, 1851, the said trustees
123 did subscribe to the capital stock of said railroad company the sum of $17,000, and that said electors relied upon said agreement of indemnification, to secure which said mortgage and others hereinafter named were given; and that said trustees of the township of Brown relied upon said agreement and promise of indemnification when they made said subscription and issued the bonds and coupons hereinafter mentioned, and avering that the defendant in said case, Seymour Scott, on the 7th day of March, A. D. 1853, made, executed, and delivered his certain mortgage for the sum of $1,800 to secure the payment of $1,800 of the bonds of the said township of Brown so issued as aforesaid, and thereby conveyed to the said trustees and their assigns one hundred acres of land in said Brown Township, Delaware County, describing the same by metes and bounds, and averring that the condition contained in said mortgage deed was in substance, that whereas the said Seymour Scott had that day executed and delivered to said trustees his bond in the penal sum of $1,800, conditioned to pay, or cause to be paid, the interest at the rate of seven

per cent. per annum (as it came due) on $1,800 of the bonds of said township, to be issued in payment of $17,000 of the capital stock of the Springfield, Mt. Vernon and Pittsburgh Railroad Company, and so much of the principle thereof (before it became due) as shall not be sooner
124 paid by dividends on a corresponding amount of said stock to be received by said trustees in pursuance of the agreement before mentioned; and it was further provided that in case said Seymour Scott should perform the conditions of his certain bond, which it was alleged he executed on the 7th of March, 1853, in the penal sum of $1,800.00, the condition of which was that whereas heretofore, on the 31st day of July, 1851, an arrangement was made by and between the said trustees of the one part and the said Seymour Scott, the obligor and others, of the other part, in relation to the contemplated stock of said township in the Springfield and Mansfield Railroad Company (afterwards changed to the name of the Springfield, Mt. Vernon and Pittsburgh Railroad Company), which arrangement was entered into in the records of said trustees, to which reference was therein made for greater certainty; and that whereas, by a vote of the legal voters of said township, had in pursuance of law, the said trustees were authorized to subscribe $17,000 of the capital stock of said company; and whereas said Seymour Scott had assumed the responsibility of saving said trustees harmless from all demands, both for principal and interest, on $1,800 of the bonds of said township, then said mortgage should be void, otherwise to be and remain in full force; alleging that said mortgage was duly recorded in the records of Delaware County on the
125 *on the* 18th day of November, 1853, and like allegations as to the execution of mortgages on real estate in Delaware County, with like conditions, and differing only in amounts, were set forth as to Peter Sheets, Samuel White, John Davidson, David A. Collum, Sylvester Wigton, Robert Reed, Charles Neil, William M. Overturf, John Holt, George Leonard, George White, David Hedgden, Daniel Sheets, George Atkinson, William Heath, Ralph S. Longwell, William K. Thrall, Jas. M. Abrams, Eleazor Dunham, William Williams, Benjamin F. Loofbuerrow, Norton Thurston, O. D. Hough, Mason Letts, Jason Merrihew, George Baker, William Gregg, and Samuel P. McCay, and setting forth that the Trustees of Brown Township aforesaid, on the 20th day of April, in the year 1853, made and delivered to the Springfield, Mt. Vernon and Pittsburgh Railroad Company a certain writing obligatory of the said township, a copy of which was attached, marked "Exhibit A," whereby it was certified that the said township and the Springfield, Mt. Vernon and Pittsburgh Railroad Company the sum of $1,000, and attaching and setting forth from other writings obligatory all of which writings obligatory were the identical bonds with coupons attached that are set out, copied, and described in the first, second, third, fourth, and fifth causes of action of the plaintiff, Annie Louis,' petition in this court, and the coupons attached to said five bonds were set forth
126 and described the same as in the plaintiff's petition, and are identically the same; and the said Richard B. Hopple averred that he was the owner then, and was before maturity, of said bonds and interest warrants, and the owner and bona fide holder for a valuable consideration of said five bonds, each for the sum of $1,000, and of the interest warrants of each of them, in all one hundred and thirty interest warrants, and averring that said mortgages had become absolute and that there was due

and remaining unpaid to him the defendant Richard B. Hopple upon said bonds and coupons the sum of $9,550, with interest on $5,000 from the first day of October, 1871, and interest on the coupons the same as is now claimed by the plaintiff in this case, in her first, second, third, fourth, and fifth causes of action, and alleging that Tilden, Scott, Homer, Barner, and a large number of other persons claimed to have any interest in the real estate mortgaged as aforesaid, and praying that they and the parties executing said mortgages be made parties defendant to his cross-petition, and that they be compelled to set forth what interest, if any, they might have in the premises so mortgaged, and that said mortgages be foreclosed, the said premises ordered to be sold, and the proceeds applied to the payment of said debt, &c. And on the 30th day of July, 1872, the de-
127 fendant W. A. Collard filed his answer and cross-petition in said case in said court of common pleas, of Delaware County, Ohio, denying that the mortgage executed by said George Baker upon the premises that were fully described in the plaintiff's petition was void, and alleging that the same was valid; and said defendant set forth the statutes mentioned in this plaintiff's petition, by virtue of which it is claimed that said trustees were authorized to subscribe to the capital stock of said railroad, and to issue the bonds of the township in payment of the same, and alleging that George Baker, on or about July 24th, A. D. 1851, was the owner in fee-simple of the real estate described fully in the petition of said Hiram Hipple, and that Seymour Scott, Peter Sheets, Samuel White, John Davidson, David A. Collum, Sylvester Wigton, Robert Reed, Chas. Neil, William M. Overturf, John Holt, George Leonard, George White, David Hodgden, Daniel Sheets, George Atkinson, William Heath, Ralph S. Longwell, William K. Thrall, James M. Abrams, Eleazor Dunham, William Williams, Benjamin F. Loofburrow, Norton Thurston, O. D. Hough, Mason Letts, Jason Merrihew, William Gregg, Samuel P. McCay, all of whom were proprietors of real estate situated in said Brown Township, and by reason thereof particularly interested in having said railroad located through said Brown Township in the manner specified in
128 the proposition and agreement, did, in consideration thereof, enter into a written agreement with the trustees and qualified voters of said Brown Township, Delaware County, viz: Whereas it is proposed by a vote of the qualified electors of the township of Brown, in the county of Delaware, to authorize the trustees of said township to subscribe $ to the capital stock of the Springfield and Mansfield Railroad Company; and whereas serious objections are entertained by some of the citizens of said township to the increase by this means of the burden of taxation already sufficiently onerous: Now, therefore, we, the undersigned, do hereby severally propose to the trustees of said township and to the said electors that we will secure the payments of the principal and interest as each becomes due of the several portions of the said amount so to be subscribed by said trustees, set opposite to the names of each of us on this paper, and severally to give security for the performance of this undertaking on our part to the satisfaction of the said trustees; provided, that the railroad be permanently located through the said township so as to pass as near the town of Eden on the south as the section line running through the center of said township, east and west, or within a quarter of a mile of said town on the north side thereof, and not otherwise; and provided,

further, that said trustees shall agree and bind themselves to the
129 subscribers severally that all the dividends paid on said stock shall be applied to the payment first of interest, and the remainder in satisfaction of so much of the principal of the debt so to be contracted for said stock, and that they will assign and transfer said stock to each of us on request, as the same may be in whole or in part fully paid by us, including the amounts paid by dividends aforesaid; and provided, also, that the principal shall not become due and payable within a shorter time after the said trustees shall have subscribed said stock than twenty years," and alleging the said agreement was signed and sealed by the parties, and the amounts (giving the same) set opposite their names, and averring that said Springfield and Mansfield Railroad was legally incorporated, and that an election was held by the qualified electors of said Brown Township on or about the 30th day of August, 1851, &c., and in reliance upon the faithful performance by the plaintiff and others of the agreement entered into by them severally as aforesaid, and a majority of said qualified electors so voting at said election, casting their ballots in favor of a subscription by said Brown Township of three hundred and forty shares of fifty dollars each (total, $17,000) to the capital stock of said company, the trustees of said Brown Township, by virtue of the authority by said
130 election and a majority of the qualified voters so invested in them, and relying upon the faithful performance by the plaintiff (Hiram Hipple) and said other parties thereto of their part of said agreement and proposal, did, on , subscribe the sum of $17,000 to the capital stock of said railroad company, which was accepted by said railroad company in accordance with the terms of said agreement, and that said railroad company did comply with all the conditions of said agreement, and that said Trustees of Brown Township did accept the terms of said agreement, and complied fully therewith, and that said George Baker, in pursuance of said agreement, executed and delivered to the said Trustees of Brown Township his certain bond or writing obligatory, a copy of which was set forth, by which he bound himself to the Trustees of Brown Township in the penal sum of $500, and the condition of which was that said George Baker had assumed the responsibility of saving the said trustees harmless from all demands, both for principal and interest, on five hundred dollars of the bonds of said township, to be issued for said stock on the terms and conditions in said agreement, and conditioned that if said George Baker should pay the said holder or holders of said bonds, or to said trustees, the interest at the rate
131 of seven per cent. per annum on five hundred dollars of said bonds, as it became due, &c., the obligation should be void, otherwise to be in full force, and signed and sealed by said George Baker; that said Baker on the 7th of March, 1853, to secure the payment and fulfillment on his part of said writing obligatory, executed and delivered to the Trustees of said Brown Township his mortgage deed, and there conveyed to the said trustees, their successors, assigns, &c., the lands and tenements described in plaintiff's petition, and giving description of same, and alleging it was the same property described in plaintiff's petition, and setting forth that the condition of said mortgage deed was in substance that said George Baker would fulfill the conditions of his said bond; and that if he, his heirs or assigns, should well and truly pay or cause to be paid the said amount of five hundred dollars, with interest at seven per cent., to the

parties at the times and in the manner set forth in said bond, then the said mortgage was to be void, otherwise to be in full force, and alleging that said mortgage was duly recorded November 15th, A. D. 1853, and that said plaintiff, Hiram Hipple, had become the owner of the premises, and alleging that on the 20th day of April, A. D. 1853, the Trustees of Brown Township made and delivered to the said Springfield, Mt. Vernon and Pittsburgh Railroad Company their bonds for $500 each
132 and $1,000 each, amounting to the sum of $17,000, and alleging that the debt evidenced by said bonds is a valid lien upon all the several parcels of land severally described in the plaintiff's petition and in the mortgages in said cross-petition of said Richard B. Hopple; that the Springfield, Mt. Vernon and Pittsburgh Railroad Company made out and completed in form proper certificates of s'ock ready to deliver to Brown Township, and which remained in possession of the secretary, but in trust to be delivered to the Trustees of Brown Township for said plaintiff and others whose lands were mortgaged as above stated in the payment by them of the said bonds or performing their agreement with said Brown Township; and said W. A. Collard incorporated in his answer all the facts and allegations of Richard B. Hopple, and alleging that he, W. A. Collard, was the owner of seven of said bonds for $500 each, numbered one, two, four, six, eight, nine, and twelve, with twenty-seven coupons attached to each bond, and setting out copy of each of said bonds and coupons, and alleging that he was the owner of five of said bonds for $1,000 each, numbered one, two, three, four, and six, with twenty-seven coupons attached to each bond, and for interest from January 1st, 1858, at seven per cent. per annum, &c., and setting out a copy of each and every of said bonds and coupons, and alleging that said bonds and coupons were due, &c., to the defendant, setting out the amount, and alleging that
133 they were a lien on the several parcels of land in said plaintiff's petition and in the cross-petition of said Richard B. Hopple described, and that all of said mortgages had become absolute; and alleging that the following persons claiming the properties mortgaged as aforesaid to secure said indebtedness, viz., Norton S. Longwell and Harl Williams, Jonathan Leonard, Tilden Scott; William Gregg, Hiram Hipple, Robert Reed, William Overturf, Leonard Ferguson, Sylvester Wigton, Norton Thurston, James E. Robinson, David Hodges, Jacob Heaverle, and George Leonard had filed their petitions in the said court of common pleas seeking to have said mortgages upon the parcels of said property respectively claimed by them canceled on the ground that said bonds and mortgages were all void; and at the instance of said W. A. Collard all said plaintiffs were made parties defendant to his cross-petition and required to file their answers, and asking that they be enjoined respectively from presenting their said suits against the defendant and others, and asking that said mortgages be foreclosed, the mortgaged premises sold, and the proceeds to the extent of their respective mortgages be applied to the payment of said indebtedness, and at his instance all the parties to the cross-petition of Richard Hopple were made defendants to his cross-petition. Said bonds and coupons mentioned and described in the cross-petition of said W. A. Collard are the same identical
134 bonds and coupons set forth and described in said Annie Louis' petition in her sixth to her 17th causes of action, inclusive. These

defendants say the Trustees of Brown Township answered in said case in said court of common pleas, denying that said mortgages were illegal and void, and set out the circumstances and consideration under which they were given, substantially as set forth in said answer and cross-petition, and averring that the same were in full force and valid, &c., and asking that the prayer of the petition be denied; and these defendants say that afterwards at the November term of said court, to wit, December 22nd, 1873, said cause came on to be heard upon demurrer of plaintiff to the answer and cross-petition, as amended, of Richard B. Hopple, defendant, and upon the demurer of the plaintiff to the answer and cross-petition of W. A. Collard, defendant, and said demurrer' were sustained, and to which exceptions were taken by said Richard B. Hopple and W. A. Collard and the Trustees of Brown Township; and said defendants failing to further answer or demur, said cause was heard on the amended petition of the plaintiff, amended cross-petition of Richard B. Hopple, and answer and cross-petition of W. A. Collard, and the evidence, and the court found that the allegations of said plaintiff's petition were true; and adjudged and decreed that the said mortgage made by the said George Baker in the petition as amended set forth was null and void, and decreed the same
135 to be cancelled upon the record of mortgages of said county; and the said Richard B. Hopple and W. A. Collard were forever enjoined from setting up any claim, right, title, or interest in and to said premises under and by virtue of said mortgage or otherwise, as claimed in said answers and cross-petitions of said Richard B. Hopple and W. A. Collard, or by virtue of any action of the said Trustees of Brown Township, and said plaintiff's title was quieted and said plaintiff secured judgment against Richard B. Hopple and W. A. Collard for costs. Said judgment remains in full force and unreversed, all of which will more fully and at large appear in the records of said court of common pleas of Delaware County, Ohio, reference being had thereto. Said Hopple and said Collard filed their petitions in error in the district court in and for Delaware County, Ohio, praying the reversal of said judgment, and the same was heard at the June term, 1874, and the court adjudged that there was no error, either in the record and proceedings aforesaid, or in giving the judgment aforesaid, in form aforesaid, by said court of common pleas, and it was considered and adjudged that the judgment aforesaid, in form aforesaid given, be in all things affirmed and stand in full force and effect, and it was ordered that a mandate be sent to the court of common pleas to carry said judgment into effect, all of which will more fully and at large appear in the records of said district court of Delaware County,
136 Ohio, reference being had thereto, to which judgment of the district court said Hopple and Collard excepted and filed their petitions in error in the supreme court of Ohio, the court of last resort having jurisdiction in said case, and said judgment of the district court of Delaware County was by the supreme court, at its December term, 1877, the decision being given by the supreme court commissioner, in all things affirmed, and said judgment is not reversable; and like judgments were entered in the suits brought to cancel the mortgages given by the parties that were made defendants at the instance of said W. A. Collard, alleged by him to have suits pending for the purpose of canceling the mortgages given by them respectively, and defendants say that all the parties giving said mort-

gages are residents of Ohio, and likewise said Richard B. Hopple and W. A. Collard, and that at the time of the said suit in said court of common pleas all of said bonds and coupons were due, and that they are the identical bonds and coupons set forth in plaintiff's petition; that said pretended transfer was not made until long after the decision and judgments aforesaid by the court of common pleas aforesaid, and after said bonds became due, and that under the laws of Ohio, and the decisions of the courts of the State of Ohio, said bonds and coupons are void, and said mortgages were cancelled by the decree of the court in said case in the court of
137 common pleas, in which said Hopple and said Collard and the Trustees of Brown Township were all parties, and after said bonds and coupons were past due; and at the time of said decree and the affirmance thereof, and after said bonds and coupons were all past due, the same were all owned and held by said Hopple and Collard, and defendants say that the proposition to subscribe to the capital stock of said railroad company $17,000 prior to the execution of said guarantee or agreement to save the trustees harmless was defeated on the 17th of July, 1851, at an election held by the voters of Brown Township, Delaware County, but that solely by reason of the execution of said agreement, and giving the security as set forth in said answer and cross-petition of said W. A. Collard, it carried at the election of August 30th, 1851, and if said agreement and security had not been proposed and accepted said proposition would have been voted down by said electors of Brown Township at said election held August 30th, 1851; and said defendants say that said mortgages having been canc'led as aforesaid by reason of said bonds and coupons being void under the law of Ohio, a judgment against said township by the U. S. courts in said bonds and coupons would be unconscionable and fraudulent as against the citizens of Brown Township other than those who executed said mortgages, and defendants say that by reason of the premises aforesaid the plaintiff is estopped from maintaining this action.

138 DEFENSE No. 4.—These defendants say for a further and fourth defense to the causes of action set out in plaintiff's petition, and numbered, respectively, the first, second, third, fourth, and fifth causes of action, the said plaintiff ought not to have or maintain said causes of action No. 1, 2, 3, and 4 and 5, because they say that said Richard B. Hopple on or about the 17th day of December, A. D. 1859, being then the legal owner and holder of the bonds and coupons set out in plaintiff's several causes of action Nos. 1, 2, 3, 4 and 5, made application for an alternative writ of mandamus which was issued by the supreme court of the State of Ohio and made returnable according to law, and said Hopple averred and set forth the same facts that the plaintiff now avers in her said causes of action Nos. 1, 2, 3, 4 and 5, as to the issuing of said bonds and coupons by the trustees of Brown Township, that they were issued under and by virtue of the authority of said acts of the general assembly of the State of Ohio, passed March 21st, 1850, February 28th, 1846, and passed March 25th, 1851, and more particularly described in plaintiff's petition, that five of said bonds and coupons (being the identical bonds and coupons set out and described fully in said plaintiff's causes of action from No. 1 to No. 5 inclusive) and the coupons attached to said bonds for the installments of interest on said bonds from the first day of January, 1854, up to and inclusive of the first day of January, 1859, came under assignment
139 from said railroad company to the relator, said Richard B. Hopple,

in the same manner as they are averred to have come to him in the plaintiff's petition, and averring that he then owned and held the same and that he was in fact the then owner and holder of the same; and averring that on the 27th day of July, 1858, he, Richard B. Hopple, demanded of the treasurer of Brown Township the payment of the interest due upon his said bonds, which was refused, and asking said supreme court to compel the trustees of Brown Township, by granting a peremptory mandamus upon the facts, to levy a tax to pay the interest coupons on said bonds in said five causes of action, and being semi-annual installments of interest due on said bonds from the first day of January, 1854; and the trustees filed their answer in said supreme court reciting said acts of the general assembly of the State of Ohio aforesaid, and issue was joined between said relator, Richard B. Hopple, who is the same person from whom plaintiff claims to have received the bonds and coupons set out in her said causes of action numbered 1, 2, 3, 4 and 5, upon the right and authority or power of said trustees to make said subscription to said capital stock of said railroad company, and upon the power of said Trustees of Brown Township to issue said bonds and coupons owned and held by said relator, Richard B. Hopple, said coupons for the interest on said bonds from the first day of January, 1854, up to and inclusive of the first day of January,
140 being wholly unpaid, and by said trustees refused to be paid.

And afterwards, to wit, at the December term, A. D. 1862, of the supreme court of Ohio, in the said case of the State of Ohio, ex. rel. Richard B. Hopple, against The Trustees of Brown Township, Delaware County, Ohio, in mandamus aforesaid, the following judgment was entered upon the issues joined between the parties, viz:

This day came the parties by their attorneys, and waived a jury and submitted this cause to the court for trial; and thereupon this cause came on to be heard on the alternative writ, answer, and testimony, and was argued by counsel; on consideration whereof the court doth find that the said supposed bond or undertakings and coupons in the writ mentioned were issued by the defendants without any legal power or authority to execute or issue the same, or any or either of them, and without any legal power or authority to make the said supposed subscription to the capital stock of the railroad company in the pleadings mentioned; and that said supposed subscription and supposed bonds or undertakings and coupons are for said reason absolutely void; and that the defendants are not estopped to set up and rely upon said invalidity of said instruments, whether the same be in the hands of bona fide holders for value or not. It is therefore considered by
141 the court that the said writ be and the same hereby is dismissed, and that the defendants go hence without day and recover of the relator Richard B. Hopple their costs in this behalf taxed at $. The relator's costs are taxed at $, and defendants say that said consideration and judgment of said court is still in full force and effect, not in the least reversed, satisfied or made void, and defendants say said pretended transfer of said bonds and coupons to said Annie Louis, plaintiff, was not made until long after said judgment was rendered, and until long after said bonds and coupons were due.

Wherefore defendants pray they may go hence without costs.

SCRIBNER AND HURD AND
JOHN S. JONES,
Of Counsel for Defendants.

STATE OF OHIO,
Delaware County, ss:

John Eckelberry, trustee of Brown Township, being sworn, says he is one of the trustees of Brown Township, Delaware County, Ohio, and one of the defendants in the above case, and that the facts and allegations contained in the answer above set forth are true as he verily believes.

JOHN ECKELBERRY.

142 Sworn to before me and subscribed in my presence this 18th day of July, A. D. 1879.

[SEAL.] F. M. MARRIOTT,
Notary Public.

Filed July 19th, 1879.

Reply and demurrer.

Circuit court of the United States, sixth circuit and northern district of Ohio, western division.

ANNIE LOUIS
vs.
THE TRUSTEES OF BROWN TOWNSHIP, DELAWARE COUNTY, OHIO. } Reply and demurrer.

Now comes the said Annie Louis, plaintiff, and by way of reply to the first statement of defense in the answer contained, denies that at the time of the commencement of this suit, or at any time since then, said Collord and Hopple were the owners or holders of said bonds and coupons, or any of them, or that either said Collord or said Hopple was the owner or holder of any of said bonds or coupons; and she further denies that the assignment and transfer thereof to her was without consideration, or that she is by collusion with them merely a nominal plaintiff in
143 this action, or that the same were made for the purpose of giving this court jurisdiction of said causes of action, or of depriving the courts of the State of Ohio of jurisdiction of the same.

And by way of reply to the second statement of defense in said answer contained, said plaintiff says that she has no sufficient knowledge whereon to found a belief of the truth of the several averments in said statement of defense contained, and which are claimed to show that the contingency upon which said Trustees of Brown Township were authorized to subscribe or issue bonds in payment of their subscription to the capital stock of said company did not arise, or of any of said averments, and she therefore denies each of them; and further she denies that all or any of the action of said trustees in regard to said subscription, and the issuing of said bonds and coupons, was void in law or in fact, and created no obligation in the hands of said trustees, or their assigns; and she denies that said assignees had knowledge of any such facts as one so alleged, or of any imperfection or legal or equitable defect in said bonds and coupons, or of any fact tending to show that the same were or are not in fact and in law just claims against the defendant.

144 And to the third and fourth statements of defense in said answer

contained, and to each of them, the said plaintiff now demurs, and for cause of demurrer shows that neither of said statements of defense contains facts sufficient to constitute a defense to said petition.

Wherefore she prays judgment as in her petition.

HOADLY, JOHNSON & COLSTON, AND
WM. H. PUGH, *Attorneys for Plaintiff.*

UNITED STATES OF AMERICA,
Southern District of Ohio, ss:

George Hoadly, being duly sworn, upon oath says that he is one of the attorneys of Annie Louis, plaintiff in this action, that she is absent from the United States of America, and that he believes the statements of the foregoing reply to be true.

GEO. HOADLY.

Subscribed in my presence and sworn to before me this 3rd day of September, 1879.

[SEAL.]

A. W. GOLDSMITH,
Notary Public, Hamilton County, O.

Filed by consent.

C. H. SCRIBNER,
Of Counsel for Def't.

Filed Sept. 4th, 1879.

145 And afterwards, to wit, on Thursday, the 18th day of September, 1879, at the June term, was filed the following:

June term, 1859, Thursday, September 18th, 1879.

This cause is continued to the next term of this court.

And afterwards, to wit, at the December term, 1879, Saturday, December 20th. This cause came on this day to be heard upon the demurrer of the plaintiff to the third and fourth statements of defense in the answer of defendants contained, and was argued by counsel and taken under advisement by the court.

And afterwards, to wit, on Thursday, June 17th, at the June term, 1880, the following was filed:

In the circuit court of the United States for the sixth circuit and northern district of Ohio, western division.

ANNIE LOUIS, AN ALIEN, CITIZEN OF THE United Kingdom of Great Britain and Ireland, plaintiff, *against* THE TRUSTEES OF BROWN TOWNSHIP, DELAWARE County, citizens of the State of Ohio, defendants.	Civil action for money only.

146 This cause being heard on the demurrers of the plaintiff to de-

fenses numbered three and four in the answer of the defendants contained, on consideration thereof the court do' overrule said demurrers, to which ruling and judgment of the court the plaintiff, by her counsel, excepts, and thereupon the plaintiff, not desiring to reply or plead further, it is considered by the court for want of a reply and without trying the issues of fact joined, that the said defendants go hence without day and recover from said plaintiff their costs herein expended, taxed to $, and in default of payment that execution issue therefor, and the amount of bond to be given in case of writ of error to the Supreme court is fixed at five hundred dollars.

147 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judge of the circuit court of the United States for the northern district of Ohio, western division, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court before you, between Annie Louis, as plaintiff, and the Trustees of Brown Township, as defendants, a manifest error hath happened, to the great damage of the said Annie Louis, as by her complaint appears; we, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right, and according to the laws and customs of the United States, should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the second day of July, in the year of our Lord one thousand eight hundred and eighty.

AUGUSTUS J. RICKS,
Clerk of the Circuit Court of the United States, N. D. O.

Allowed by—

Filed July 7th, 1880.

148 The United States of America to the Trustees of Brown Township, Delaware County, Ohio, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the western division of the northern district of Ohio, wherein Annie Louis is plaintiff in error, and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Martin Welker, district judge of the northern district of Ohio, sitting as circuit judge, this second day of July, in the year of our Lord one thousand eight hundred and eighty.

M. WELKER,
Dist. Judge U. S.

149 On this seventh day of July, in the year of our Lord one thousand eight hundred and eighty, I do hereby acknowledge service of the within citation.

C. H. SCRIBNER,
Attorney for Defendant in Error.

(Indorsed:) Filed July 7th, 1880. Clarence Brown, dep. cl'k.

150 Know all men by these presents that we, William A. Collord and Richard B. Hopple, both of Cincinnati, Ohio, are held and firmly bound unto the Trustees of Brown Township, Delaware County, State of Ohio, in the full and just sum of five hundred dollars, to be paid to the said Trustees of Brown Township, their certain attorney, executors, administrators, successors, or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals, and dated this sixth day of July, in the year of our Lord one thousand eight hundred and eighty.

Whereas lately, at a June term of the circuit court of the United States in and for the western division of the northern dist. of Ohio, in a suit depending in said court between Annie Louis, as plaintiff, and the Trustees of Brown Township, Delaware County, State of Ohio, a judgment was rendered against the said Annie Louis, and the said Annie Louis having obtained a writ of error, and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Trustees of Brown Township, Delaware County, Ohio, citing and admonishing to be and appear at a Supreme Court of the United States, to be holden at Washington the second Monday of October next;

Now the condition of the above obligation is such, that if the said Annie Louis shall prosecute her writ of error to effect, and answer all damages and costs if she fail to make her plea good, then the above obligation to be void; else to remain in full force and virtue.

W. A. COLLORD. [L. S.]
RICHARD B. HOPPLE. [L. S.]

Sealed and delivered in presence of—
GEO. HOADLY.

Approved by—

M. WELKER,
District Judge U. S., N. O. District.

Filed July 8th, 1880.

151 NORTHERN DISTRICT OF OHIO,
Western Division:

I, Augustus J. Ricks, clerk of the circuit court of the United States for said division and district, do hereby certify the above and foregoing to be

a true, correct, and complete transcript of the record of all the proceedings had in said court in the case wherein Annie Louis, an alien, citizen of the United Kingdom of Great Britain and Ireland, is plaintiff, and the Trustees of Brown Township, Delaware County, citizens of the State of Ohio, are the defendants, as the same appears from the files and record of said court now remaining in my custody and control.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office, in the city of Toledo, in said division and district, on this 30th day of July, A. D. 1880, and in the 105th year of the Independence of the United States of America.

[SEAL.] AUGUSTUS J. RICKS, *Clerk.*

(Indorsement on cover:) No. 248. Annie Louis, plaintiff in error, vs. the Trustees of Brown Township, Delaware County, Ohio. N. Ohio C. C. U. S. Filed 4th August, 1880.

104-162

OFFICE SUPREME COURT U. S.
FILED
MAR 13 1883

Robert Clarke & Co., Printers, Cincinnati, O. [*March, 1883.*

IN THE

Supreme Court of the United States.

Annie Louis,
Plaintiff in Error,

No. 248.] *vs.*

The Trustees of Brown Township, Delaware County, Ohio,
Defendants in Error.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF OHIO, WESTERN DIVISION.

ARGUMENT

of HOADLY, JOHNSON & COLSTON,
Attorneys for Plaintiff in Error.

Robert Clarke & Co., Printers, Cincinnati, O.] [*March, 1883.*

IN THE

Supreme Court of the United States.

Annie Louis,

Plaintiff in Error,

No. 248.] *vs.*

The Trustees of Brown Township, Delaware County, Ohio,

Defendants in Error.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF OHIO, WESTERN DIVISION.

ARGUMENT

of HOADLY, JOHNSON & COLSTON,

Attorneys for Plaintiff in Error.

CASE STATED.

This was an action at law under the civil code of Ohio, upon seventeen bonds, given, as was claimed in the petition, under the authority of acts of the general assembly of the State of Ohio, by the trustees of Brown Township, Delaware County, Ohio, in payment of a subscription to the capital stock of the Springfield, Mount Vernon, and Pittsburgh Railway, payable to the company or its assigns, and by it assigned to Brown, Collins

& Brown, the first five of which, for $1,000 each, were assigned by Brown, Collins & Brown to R. B. Hopple, and by him to the plaintiff:—the other twelve, namely, five for $1,000 each and seven for $500 each, having been assigned by Brown, Collins & Brown to W. A. Collard, and by him to the plaintiff. The principal of each of the bonds matured October 1st, 1871. No interest has been paid since January, 1858, and the plaintiff sought to recover the said principal sums, and interest installments maturing semi-annually from July 1st, 1858. The petition occupies the record from pages 1 to 46, inclusive. The answer, (pages 47 to 59, inclusive), sets up four defences, of which the first and second require no attention from us at present, for the reason that they offered issues of fact, accepted by reply, which have not been tried. To the *third* and *fourth* statements of defence, the plaintiff demurred, (Record, page 60). This demurrer was overruled, (Record, page 62), and the plaintiff not desiring to reply or plead further, it was

"considered by the Court, for want of a reply, and without trying the issues of fact joined, that the said defendants go hence without day and recover from said plaintiffs their costs herein expended."

To reverse this judgment the present writ of error is sued to this Court.

The *third* defence applies to all the causes of action. It sets out that, on the 18th of October, 1871, a suit was commenced in the Court of Common Pleas, in the county of Delaware, and State of Ohio, wherein Hiram Hipple was plaintiff and the trustees of Brown township, Delaware county, Ohio, and others, including W. A. Collard and Richard Hopple, were defendants, in which the plaintiff claimed, by his petition, that he had the legal

title, and was seized in fee simple, of and to certain real estate in said Brown township, described in his petition by metes and bounds, and that the defendants, including said Hopple and Collard, claimed some title or interest growing out of a certain pretended mortgage upon said premises, to secure the payment of the bonds and coupons aforesaid;—and setting forth that said mortgage had been executed in pursuance of an agreement between one George Baker and others and the trustees of Brown township, Delaware county, by the terms of which it was agreed by said Baker and others, that, if the qualified electors of said Brown township would authorize the trustees of said township to subscribe seventeen thousand dollars to the capital stock of the Springfield and Mount Vernon Railroad Company, they would secure the payment of the principal and interest as the same became due, and that such mortgage was executed to secure said agreement;—that said trustees subscribed said seventeen thousand dollars to the capital stock of said railroad company, and issued said bonds and coupons therefor, and said petition set forth the same acts of the general assembly of the State of Ohio, described in the petition filed in this case, passed February 28, 1846, March 21, 1850, and March 25, 1851, and alleged that, under and by virtue of said acts, said trustees of Brown township were not authorized to subscribe for said stock or issue said bonds, and that said bonds and coupons were void in law, and asked that said mortgage be cancelled upon record, and said bonds and coupons declared null and void.

And that afterwards, to wit, on April 2d, 1872, said Richard B. Hopple filed, in said cause, his answer and cross-petition, and subsequently an amendment thereto, setting forth the said acts of the General Assembly, and averring that by the authority of said acts, and by virtue of the direction of

a majority of the electors of said township, expressed at an election held by the qualified electors of said township, on August 30th, 1851, said trustees did subscribe, to the capital stock of said railroad company, said sum of seventeen thousand dollars, relying upon said agreement of indemnification, to secure which said mortgage and others thereinafter named were given;—that said trustees of Brown Township relied upon said agreement and promise of indemnification, when they made said subscription, and issued said bonds and coupons;—and averring that the several defendants to said cross-petition, on the 7th day of March, 1853, made, executed and delivered their certain mortgages in various sums, one of them (Seymour Scott) for eighteen hundred dollars, on one hundred acres of land in said township, described by metes and bounds, subject to a condition of defeasance, that, whereas, he had executed and delivered to said trustees his bond in the penal sum of eighteen hundred dollars, conditioned to pay or cause to be paid the interest, on eighteen hundred dollars of the bonds of said township, to be issued in payment of said seventeen thousand dollars so to be subscribed, and so much of the principal thereof, before it became due, as should not be paid sooner by dividends on a corresponding amount of said stock, to be received by said trustees in pursuance of said agreement, and that if he should perform the conditions of his bond, in said penal sum of eighteen hundred dollars, executed March 7th, 1851, the condition of which was that, whereas, on July 31st, 1851, an arrangement was made by and between said trustees and said Scott, and others in relation to said contemplated stock in said railroad company, the name of which was afterwards changed to the Springfield, Mount Vernon and Pittsburgh Railroad Company; and, whereas, by a vote of the legal voters of such

township, had in pursuance of law, said trustees were authorized to subscribe seventeen thousand dollars to the capital stock of said company; and, whereas, Seymour Scott had assumed the responsibility of saving said trustees harmless from all demands, both for principal and interest, on eighteen hundred dollars of the bonds of said township, then said mortgage should be void, otherwise to be and remain in full force and effect;—alleging that said mortgage was duly recorded;—with like allegations as to the execution of mortgages on other real estate in Delaware county, with like conditions, and differing only in amounts, made by Peter Sheets and twenty-seven others persons respectively;—and setting forth that the trustees of Brown township aforesaid, on April 20th, 1853, issued and delivered the bonds and interest warrants set forth in the first five causes of action of the plaintiff, Annie Louis, of which said Hopple averred that he was then, and before maturity, the owner and *bona fide* holder for a valuable consideration, and averring that said mortgages had become absolute, and that there was due and unpaid to him thereon the amount of the principal of said bonds and the coupons thereon, being the same sums claimed by the plaintiff in this case in her first five causes of action;—and alleging that divers persons named claimed to have an interest in the real estate mortgaged as aforesaid, and that said Hopple prayed that they and the parties executing said mortgages be made parties defendant to his cross-petition, and compelled to set forth what interest, if any, they have in the premises so mortgaged, and that said mortgages be foreclosed, the premises sold, and the proceeds applied to the payment of said debt.

And, further, the said answer averred that the defendant, William A. Collard, on July 30th, 1872, filed a like answer and cross-petition, denying that the said mortgage executed

by George Baker upon the premises described in the plaintiff's petition, was void, alleging that the same was valid, and setting forth the said statutes, by virtue of which it is claimed that said trustees were authorized to subscribe to the capital stock of said company, and to issue the bonds of the township in payment of the same;—and alleging that George Baker, on or about July 24th, 1851, was the owner in fee simple of the real estate described in the petition of said Hiram Hipple, and that Seymour Scott, Peter Sheets, and twenty-six others, all of whom were proprietors of real estate in said township, and interested in having said railroad located through said township, entered into a written agreement with the trustees and qualified voters of said Brown township, Delaware county, to wit:

"Whereas, it is proposed, by a vote of the qualified electors of the township of Brown, in the county of Delaware, to authorize the trustees of said township to subscribe $——— to the capital stock of the Springfield and Mansfield Railroad Company, and whereas serious objections are entertained, by some of the citizens of said township, to the increase by this means of the burden of taxation, already sufficiently onerous; now, therefore, we, the undersigned, do hereby severally propose to the trustees of said township, and to the said electors, that we will secure the payment of the principal and interest, as each becomes due, of the several proportions of the said amount so to be subscribed by said trustees, set opposite to the names of each of us on this paper, and severally to give security, for the performance of this undertaking, on our part, to the satisfaction of the said trustees; provided, that the railroad be permanently located through the said township, so as to pass as near the town of Eden, on the south, as the section line running through the centre of said township, east and west, or within a quarter of a mile of said town on the north side thereof, and not otherwise; and provided, further, that said trustees shall agree, and bind themselves to the subscribers severally, that all the dividends paid on said stock shall be applied to the payment, first of the interest, and the remainder in satisfaction of so much of

the principal of the debt so to be contracted for said stock, and that they will assign and transfer said stock to each of us on request, as the same may be in whole or in part fully paid by us, including the amounts paid by dividends aforesaid; and provided, also, that the principal shall not become due and payable within a shorter time after the said trustees shall have subscribed for said stock than twenty years."

And, further, that the said agreement was signed and sealed by the parties, stating the amounts, set opposite their names, and averring that the said railroad company was legally incorporated, and an election held by the qualified electors of said township, on or about August 30th, 1851;—and that in reliance upon the faithful performance by the plaintiff and others of the said agreement, and the majority of said qualified electors, so voting at said election, having cast their ballots in favor of a subscription, by said Brown township, of three hundred and forty shares of fifty dollars each, total seventeen thousand dollars, to the capital stock of said company, said trustees of said township, by virtue of the authority by said election, and by the majority of said qualified voters so invested in them, and relying upon the faithful performance by the plaintiff, Hiram Hipple and said other parties thereto, of their part of said agreement and proposal, did subscribe said sum of seventeen thousand dollars to the said capital stock, which was accepted by said railroad company in accordance with the terms of said agreement;—and that said railroad company did comply with all the conditions of said agreement, and that said trustees of Brown township did accept the terms of said agreement and complied fully therewith, and that said George Baker, in pursuance of said agreement, executed and delivered to said trustees his certain bond or writing obligatory, (a copy of which was set forth), and bound himself thereby to the said trustees in the penal

sum of five thousand dollars, the condition of which was that he had assumed the responsibility of saving them harmless from all demands, both for principal and interest, on five hundred dollars of the bonds of said township, to be issued for said stock, on the terms and conditions of said agreement, and conditioned that if he should pay to the holder or holders of said bonds, or to said trustees, the interest at the rate of seven per cent per annum on five hundred dollars of said bonds as it became due, the obligation should be void, otherwise in full force, and signed and sealed by said Baker;—that said Baker on March 7th, 1853, to secure the payment and fulfillment on his part of said writing obligatory, executed and delivered to said trustees his mortgage deed, and conveyed to them the lands and tenements described in the petition, being the same property described in the petition, and that the condition of said mortgage deed was, in substance, that the said George Baker would fulfill the conditions of his said bond, and if he should well and truly cause to be paid the said sum of five hundred dollars, with interest at seven per cent, to the parties, and at the times, and in the manner set forth in said bond, then said mortgage should be void, otherwise in force; and that said mortgage was duly recorded on November 15th, 1853;—and that said plaintiff, Hiram Hipple, had become the owner of the premises;—and that on April 30th, 1853, the said trustees made and delivered to said Springfield, Mount Vernon and Pittsburgh Railroad Company, their bonds for five hundred and for one thousand dollars each, amounting to seventeen thousand dollars;—*that the debt evidenced by said bonds is a valid lien upon all the parcels of land described in the plaintiff's petition, and in the mortgages described in the cross-petition of Hopple;*—that the railroad company made out, in proper form, certificates of stock,

ready to deliver to Brown township, which remained in the possession of the secretary in trust to be delivered to the trustees of Brown township, for said plaintiff and others, whose lands were mortgaged as aforesaid;—and that said Collard incorporated in his answer all the facts and allegations of the answer of the said Hopple, and alleged that he was the owner of bonds and coupons, being the same described in the last twelve counts of the plaintiff's petition in this case, *and that they were due, and a lien on the several parcels of land in the petition and cross-petition of Hopple described*, and that all said mortgages had become absolute;—and that divers persons, viz: fifteen persons named, including the plaintiff, Hiram Hipple, had filed their petitions in the Court of Common Pleas, seeking to have said mortgages cancelled, on the ground that said bonds and mortgages were void, and all said parties were made parties defendant to the cross-petition of said Collard and required to answer the same;—and said Collard further prayed that they be enjoined respectively from prosecuting their suits, and that said mortgages might be foreclosed, the mortgaged premises sold, and the proceeds applied to the payment of said indebtedness, and at his instance all the parties to the cross-petition of Richard B. Hopple were made parties to his cross-petition.

And said answer further averred that the trustees of Brown township answered, in said case in said Court of Common Pleas, denying that said mortgages were illegal and void, and setting out the circumstances and consideration under which they were given, substantially as set forth in said answers and cross-petitions of Hopple and Collard, and averring that the same were in full force and valid, and asked that the prayer of the petition be denied.

And said answer averred further that, at the November

term of the Court of Common Pleas, to wit, December 22d, 1873, the demurrer of the plaintiff, Hiram Hipple, to the several answers and cross-petitions of Richard B. Hopple, as amended, and of William A. Collard, were sustained, *to which said Hopple and Collard and the trustees of Brown township excepted;* and said defendants failing to further answer or demur, said cause was heard upon the amended petition of the plaintiff, the amended cross-petition of Richard B. Hopple, and the answer and cross-petition of W. A. Collard, and the evidence, whereupon the Court found that the allegations of said petition were true, and adjudged and decreed that the mortgage of said George Baker was null and void, and that the same should be cancelled, and that the said Richard B. Hopple and W. A. Collard should be forever enjoined from setting up any claim, right, title or interest in or to said premises, under and by virtue of said mortgage, or otherwise, as claimed in their answers and cross-petitions, or by virtue of any action of said trustees of Brown township, and said plaintiff's title was quieted, and said plaintiff recovered judgment against said Hopple and Collard for costs, which judgment remains in full force and unreversed;—that said Hopple and Collard filed their petitions in error in the District Court for Delaware County, Ohio, praying for the reversal of said judgment;—that the same were heard and said judgment affirmed at the June term, 1874;—to which judgment said Hopple and Collard excepted, and filed their petitions in error in the Supreme Court of Ohio, and said judgment of the District Court was affirmed by said Supreme Court, at its December term, 1877, and said judgment is not reversible;—and that like judgments were entered in the suits brought to cancel the mortgages given by the parties that were made defendants at the instance of said Collard;—that

all said mortgagors and said Hopple and Collard were and are residents of Ohio;—that, at the time of said suit in said Common Pleas, all of said bonds and coupons were due, and are the same set out in the petition in this case;—that the transfer to the plaintiff was not made until long after the decision and judgment aforesaid;—that under the laws of Ohio, and the decisions of the Courts of Ohio, said bonds and coupons are void, and said mortgages were cancelled by the decree of the Court in said case in the Court of Common Pleas;—that at the time of said decree and its affirmance, and after said bonds and coupons were all past due, the same were all owned and held by said Hopple and Collard;—that the proposition to subscribe to the capital stock of said railroad company seventeen thousand dollars, prior to the execution of said guaranty or agreement to save the trustees harmless, was defeated on April 17th, 1851, at an election held by the voters of Brown township, Delaware county; but that solely by reason of the execution of the agreement and giving the security set forth in the said answer and cross-petition of the said Collard, said proposition carried at the election of August 30th, 1851, and would have been voted down at said election had not said agreement and security been proposed and accepted;—and further that said mortgages having been cancelled as aforesaid, by reason of said bonds and coupons being void under the laws of Ohio, a judgment against said township, by the United States Courts, on said bonds and coupons, would be unconscionable and fraudulent as against the citizens of Brown township, other than those who executed said mortgages, and that, by reason of the premises, the plaintiff is estopped from maintaining this action.

The *fourth* defence (Record, page 58), applies to the first five causes of action, and to the bonds stated in

each only, and sets up that, on or about the 17th day of December, 1859, Richard B. Hopple, being then the legal owner of the bonds and coupons described in these causes of action, applied to the Supreme Court of Ohio for an alternative writ of mandamus, averring the same facts which the plaintiff now avers, in her first five causes of action, as to the issuing and maturity of the said bonds and coupons, and as to the assignment of them to said Hopple, and averring that he then owned and held the same, and that on the 27th day of July, 1859, said Hopple demanded, of the treasurer of Brown Township, the payment of the interest due upon said bonds, which was refused, and thereupon that said Hopple asked the Supreme Court of Ohio to compel the trustees of Brown Township, by peremptory mandamus, to levy a tax to pay the interest coupons upon said bonds in said five causes of action described; and that said trustees filed their answer in said Supreme Court, reciting the acts of the General Assembly of Ohio, passed February 28, 1846, March 21, 1850, and March 25, 1851; and issue was joined between said relator, Richard B. Hopple, being the same person from whom plaintiff claims to have received her bonds and coupons, set out in the said five causes of action, upon the right and authority or power of said trustees to make said subscription to the capital stock of said railroad company, and upon the power of said trustees of Brown Township to issue said bonds and coupons. And afterwards at the December term, 1862, of the Supreme Court of Ohio, in the said case of the State of Ohio on the relation of the said Richard B. Hopple, against the trustees of Brown Township, Delaware County, Ohio, in mandamus aforesaid, a judgment was entered upon the issues, that the supposed bonds, or undertakings, and coupons were

issued without any legal power or authority to execute or issue the same, or any or either of them, and without any legal power or authority to make the said supposed subscription to the capital stock of the railroad company, and that the same are absolutely void; and that the defendants are not estopped to set up and rely upon said invalidity of said instruments, whether the same be in the hands of *bona-fide* holders for value or not. It was therefore considered by the Court that the said writ be and the same was thereby dismissed, and that the defendants go thence without day and recover of the relator, Richard B. Hopple, their costs. And the defendants further answered that the consideration and judgment of said court is still in full force and effect, not in the least reversed, satisfied, or made void, and that said pretended transfer of said bonds and coupons to said Anne Louis, plaintiff, was not made until long after said judgment was rendered, nor until long after said bonds and coupons were due.

ASSIGNMENT OF ERRORS.

1. The Circuit Court erred in overruling the demurrer to the *third* defence.

2. The Circuit Court erred in overruling the demurrer to the *fourth* defence.

3. The Circuit Court erred in rendering judgment for the defendants.

ARGUMENT.

I.

It was admitted by the demurrer, and is not to be denied, that the judgment of the Supreme Court of Ohio, was and is, that the bonds were and are absolutely void for want of legal authority to issue them. Not believing that

any such judgment would have been or could be now rendered in any Federal Court, we are now prosecuting this suit in the belief that this Court will disregard that judgment, except so far as it has become an absolute technical bar to the prosecution of this action. The cause will be found reported under the name of *Hopple* v. *The Trustees of Brown Township*, 13 O. S. 311.

The question presented, by the demurrer to the *third* answer, is, whether the judgment rendered in behalf of Hiram Hipple and his associate mortgagors against Hopple, Collard and the trustees of Brown Township, constitutes a bar, preventing this Court and the Circuit Court from investigating the merits of the controversy as between Hopple and Collard respectively, and the trustees of Brown Township.

The case of *Hopple*, plaintiff in error, v. *Hipple*, defendant in error, was decided by the Supreme Court Commission, not by the Supreme Court of Ohio. It will be found reported in 33 O. S. 116.

Chief Justice Johnson, the only member of that Court, now upon the bench of the Supreme Court of Ohio, dissented, but the grounds of dissent are not stated. The opinion was pronounced by Scott, J., who was one of the concurring judges in the decision of the case of *Hopple* v. *Brown Township*, 13 O. S. 311, and follows that decision. The present record does not justify the re-examination of this question now; but it is only fair for us to say that the question is pending in this Court, in the case of the *Northern National Bank of Toledo* v. *The Trustees of Porter Township, Delaware County, Ohio*, No. 485, upon the docket of the present term.

The italics which we have used, in stating the case, have already pointed the attention of the Court to

the fact that, in the case of *Hipple* v. *Hopple*, there was no issue whatever between Hopple or Collard of the one part, and the trustees of Brown Township of the other. They were severally made defendants to Hipple's petition, and each filed his answer, and each asserted the legality and binding obligation of the bonds now in controversy. The cause of *Hipple* v. *Hopple* presented an issue between Hipple and his co-mortgagors of the one part, and Hopple, Collard and the trustees of Brown Township of the other part, the former denying, the latter uniting in asserting the validity of the bonds and coupons in question. It does not seem to us possible that this Court can sustain the decision of the Circuit Court, extending the estoppel of this judgment beyond the parties who were litigant as against each other, and making it a bar by way of final and conclusive estoppel, as between the defendants, whose respective positions upon the record were harmonious and not controversial. There was no issue between these defendants;—they all agreed that the bonds were valid;—and the rules of law, as we understand them, upon this subject, do not extend the bar of the judgment any further than to bind parties ranged upon opposite sides of the issue, or, at least, upon opposite sides of the actual controversy. To this rule there may be an exception, where title or liabilities, as between co-defendants, must be traced through their antagonist; in such case a judgment for or against the antagonist may establish or destroy the link between the co-defendants, but the exception does not apply to this case, inasmuch as neither Hopple nor Collard, in any sense of the phrase, traced title or claimed liability through or by means of Hipple and his co-mortgagors.

We are thus brought to the naked question whether, when A., who has agreed to indemnify B. against C., sues

B. and C. to cancel the liability, and B. and C. concur in averring that the liability still exists, B. and C. are bound *inter sese*, by a judgment in favor of A. The rule on this subject is thus stated by Mr. Bigelow in his work on Estoppel, second edition, p. 46:

"Judgment against several defendants cannot, however, determine the rights of the defendants *inter sese*. Thus, if judgment be given against several co-contractors and satisfaction is obtained by one of them, he can not use the judgment as binding evidence against the others of their liability to him to contribute. No such point was decided in the former action; the judgment decided the existence and legality merely of the demand. The parties must be adversary. Where, however, the respective rights of the parties are drawn in issue and adjudicated, the judgment is conclusive between them."

In the present case the parties to the present record were not adversary. Hopple and Collard and the trustees of Brown Township agreed that the bonds were valid and binding. The respective rights of these parties were not drawn in issue, and were not adjudicated.

Minnesota Company v. *Chamberlain*, 3 Wall. 704, is directly in point. It that case it was shown that Cleveland, a judgment creditor of the Lacrosse & Milwaukee Railroad Company, had brought an action to set aside a lease made by that company to Chamberlain, and a judgment confessed in his favor, on the ground that they were without consideration and in fraud of creditors, and hindered the collection of his judgment; that the Lacrosse Company and Chamberlain had answered, denying all fraud, and that Cleveland had taken issue by replication. The Court had found for Chamberlain, and decreed that the articles of agreement (lease,)

"be and hereby are vacated, annulled and made void, so

that the same shall not be of any force and effect whatever,"

and that the

"judgment and all executions and proceedings thereon be and hereby are vacated, annulled, made void and set aside, so that the same shall have no effect whatever."

The decree had also perpetually enjoined and restrained Chamberlain,

"from controlling or meddling with the railroad or any thing belonging to it under the articles of agreement."

It was claimed that this decree finally fixed the equities between Chamberlain and the Lacrosse Company, but this Court, Chief Justice Chase pronouncing the opinion, held, that it was not a bar as between them. It was claimed that the decree was broad enough to settle all the equities between the parties. The Chief Justice says, (p. 710) in reply to this argument:

"It is our duty to construe the decree with reference to the issue it was meant to decide. Its words are very broad and very emphatic; but we cannot say that they were intended by the District Court to have any greater effect than to avoid and set aside, as against Cleveland, the agreement and the judgment impeached by his bill. We think, on the contrary, that a decree having such an effect could not have been properly rendered upon the pleadings and issue in that cause. Neither the Lacrosse Company nor Chamberlain sought to avoid the agreement or the judgment, nor asked any relief whatever as against each other. Indeed, the case shows that both regarded the agreement and the judgment, as essential to their respective interests. We cannot ascribe to any court an intention, by a decree on such pleadings, to annul such an arrangement as between the parties to it, nor could we approve such action even were the intent clear beyond question. No question was made between Chamberlain and the Lacrosse Company, nor could any question arise between them of any such nature as that between those parties and Cleveland, nor

could they be required, in a suit prosecuted by Cleveland, to enforce satisfaction of his judgment by setting aside their arrangement as void against creditors, to submit that arangement, as between themselves, to the action of the Court."

Again, after commenting on the cases of *Farquharson* v. *Seton*, 5 Russell, 45, and *Chamley* v. *Lord Dunsany*, 2 Schoales and Lefroy, 718, and showing that in them there was controversy between the co-defendants, the Chief Justice proceeds:

"But neither of these cases assert the doctrine maintained here for the appellants, that a court of equity may decree between defendants, when neither pleadings nor proofs show any controversy, or adverse interest between them. Nor have we been referred to any case which does assert that doctrine."

To the same effect is *McCrory* v. *Parks*, 18 O. S. 1. On p. 7, Day, C. J., says:

"Is the plaintiff estopped from availing himself of the defence set up in his reply? This is claimed to be the case, by virtue of the proceedings in Knox county, to which the plaintiff was a party. It is true that the Court found, in that case, that the property of Parks was sold, and that the full amount of the judgment was made upon the execution. But these findings were upon issue made between Cooper & Co.,—the plaintiffs in the judgment of amercement,—and the parties to this case who were co-defendants in that. These parties were not adversary parties in that case, nor were their respective rights against each other in controversy."

To the same effect is *Duncan* v. *Holcomb*, 26 Ind. 378, from which we quote as follows:

"It is claimed, in support of the action of the Court below, that the matter involved in this suit was adjudicated in the action, on the bond of the plaintiff and defendant, to which they were parties defendant. It is only those matters involved in the issues made by the pleadings, that are

considered *res adjudicatæ*. Co-defendants may or may not settle their respective rights, as between themselves, in the suit against them. Having executed a joint bond, the parties to the case in judgment were liable for the default of each other. The judgment was rendered according to the liability, and does not determine their rights as between themselves. Had Duncan set up the facts in that case in a cross-complaint against her co-defendant, in such a way as to have presented that question, then she would have been concluded by the judgment."

To the same effect is *Gardner* v. *Raisbeck*, 28 N. J. Eq. 71. We quote the syllabus, which fairly represents the case and the decision:

"On a bill to compel the defendant to account for five bonds, with the mortgages securing the payment thereof, assigned and delivered to the defendant by the complainant, in trust to sell them and pay over the proceeds to the latter. A plea that as to four of the bonds, a Court of competent jurisdiction, in a suit in which the present complainant and defendant were co-defendants, found that the assignments of those instruments were for valuable consideration, *Held*, not good.

2. To make a judgment pleaded in bar, a technical bar, it must appear to have been for the same subject-matter, and between the same, or substantially the same parties.

3. The complainant in the present suit not claiming under the complainant in the former suit, and his attitude in the former suit being merely that of resistance to the claim of complainant in that action, the judgment in the former suit was held not to have been between the same parties, nor substantially so, nor for the same subject-matter."

There is another familiar ground of Ohio jurisprudence, which establishes our rights in this case, originated, as it has, within the State of Ohio. It is the established law of Ohio, contrary to the rule which prevails in this Court, as was settled in the cases of *Carpenter*

v. *Longan*, 10 Wall. 271, and *Kenicott* v. *Supervisors*, Ibid. 452, that a mortgage is not negotiable, and that the assignee of a mortgage takes it subject to all the defences of the mortgagor, even where the negotiable note secured by the mortgage has passed to a *bona fide* endorser or assignee free from any defence or equity. *Bailey* v. *Smith*, 14 O. S. 396,411.

From this it conclusively follows, that a judgment rendered by an Ohio Court, where this peculiar rule of law prevails, quieting title upon and against a mortgage, does not estop the holder of negotiable paper secured by such mortgage from success in a personal action on such paper against the mortgagor. If he be a *bona fide* holder for value, he may succeed in the personal action, and at the same time fail in his attempt to foreclose the mortgage, if the mortgage were obtained by fraud, or there were any other defence which might be successfully made as between the original parties. His defeat in the suit on the mortgage is therefore, perfectly consistent, in Ohio, with his right to succeed on the note.

There is nothing in the case of *Hopple* v. *Hipple* to militate against this decision, for that case does not relate to or in any way consider the rights of *bona fide* purchasers.

II.

The question presented by the demurrer to the *fourth* defence is whether a judgment in mandamus, refusing to levy a tax to pay the interest upon a bond, is a bar to a civil action against the debtor upon the bond itself.

Were it not for the case of *Block* v. *Commissioners*, 98 U. S. 686, we should confidently hope to be able to persuade this Court that, on general principles, a judgment in

mandamus is not a bar to the prosecution of the civil action, but, in view of the decision in that case, we do not feel at liberty to enter upon the debate, and confine ourselves, therefore, to the single proposition, that, by the statute law of the State of Ohio, a judgment in mandamus is a bar to a further prosecution in a civil action, only where the judgment grants, and not where the judgment denies, the relief sought for.

Our contention is founded upon sections 578 and 579 of the code of civil procedure of the State of Ohio, which took effect June 1st, 1853, and was in force when the mandamus in question was disposed of by the Supreme Court. Title 18, chapter 4, of the Ohio code is entitled, "Proceedings upon Mandamus," and embraces sections 569 to 580 of the code.

Section 578 provides that,

"if judgment be given for the plaintiff, he shall recover the damages which he shall have sustained, to be ascertained by the Court or a jury, or by referees, in a civil action, and costs; and a peremptory mandamus shall also be granted to him without delay."

Section 579 is in the following language:

"A recovery of damages by virtue of this chapter against a party who shall have made a return to a writ of mandamus, is a bar to any other action against the same party after the making of such return."

Upon the principle, *Expressio unius est exclusio alterius*, it would seem to us that the 579th section emphasizes very strongly the negative, namely, that a failure to recover damages is not a bar to another action. Otherwise why provide that the recovery shall bar the second action? And if the failure to recover damages do not bar the second action, and if the express statutory inhibition were necessary to provide that the recovery of damages shall

bar, it must be on the ground that by the law of the State of Ohio, whatever be the law in Kansas, where the case of *Block* v. *Commissioners* originated, a judgment in mandamus is not a bar to the prosecution of a civil action for the money damages claimed, or which might be had by the mandamus. Moreover, the relief sought by the mandamus is the levy of a tax; the relief sought by the judgment is the recovery of a debt. The duty invoked in the former case is public; the obligation enforced in the latter is private.

For these reasons, we respectfully submit that the judgment of the ~~Cincinnati~~ Circuit Court should be reversed, and the cause remanded with instructions to sustain the demurrers to the 3rd and 4th defences, and to try the issues of fact.

HOADLY, JOHNSON & COLSTON,
Attorneys for Plaintiff in Error.

109-162

SUPREME COURT U.S.
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SUPREME COURT OF THE UNITED STATES

No. 36.—Present Calendar.

Annie Louis,
Plaintiff in Error,

vs.

The Trustees of Brown Township, Delaware County, Ohio.
Defendants in Error.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF OHIO, WESTERN DIVISION.

Reply of Hoadly, Johnson & Colston on behalf of Plaintiff in Error to the Brief of Defendant in Error.

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I.

The cases of *Township of East Oakland* v. *Skinner*, 94 U. S. 255, and *Township of South Ottawa* v. *Perkins*, 94 U. S. 260, cited by counsel for defendant in error, are distinguishable from this case, as in neither of those cases could the bonds have been valid under existing law; and, therefore, the township could not have been estopped to deny the validity of the bonds in the hands of the holder, even though he held for value and *bona fide*. The case of *McClure*

v. *Township of Oxford* (94 U. S. 429), also cited by counsel for defendant in error, does not support the proposition it is cited for, as it merely holds that bonds will not be valid in the hands of those who can not claim protection as *bona fide* holders for value, unless all the conditions precedent required by law are complied with. WAITE, C. J., says:

"A municipality must have legislative authority to subscribe to the capital stock of a bridge company before its officers can bind the body politic to the payment of bonds purporting to be issued on that account. Municipal officers can not rightfully dispense with any of the essential forms of proceeding which the legislature has prescribed for the purpose of investing them with power to act in the matter of such a subscription. If they do, the bonds they issue will be invalid in the hands of all that can not claim protection as *bona fide* holders."

In that case, the Court further hold that the form of the bonds was such as to give notice to the world of their invalidity.

The Court further say:

"If a purchaser may be, as he sometimes is, protected by false recitals in municipal bonds, the municipality ought to have the benefit of those that are true."

The true rule upon the subject is admirably stated in Pollock's Principles of Contract, 1st American edition, p. 94, note *d*, by Mr. Wald, the American editor:

"Where the authority of the officers of a corporation to bind it by their act depends upon the performance of a condition precedent, or the existence of an extrinsic fact, and the question of compliance with the condition, or of the existence of the fact, is to be determined by them, or rests peculiarly within their knowledge, their representation (which may sometimes consist simply in doing the act), that the condition has been complied with, or that the fact does exist, may be relied on by one acting in good faith, and is conclusive and binding on the corporation.

"*Railroad Co.* v. *Schuyler*, 34 N. Y. 30, 73; *Merchants' Bank* v. *State Bank*, 10 Wall. 604, 644; *Miners' Ditch Co.* v. *Zellerbach*, 37 Cal. 543, 587; *Railroad Co.* v. *Norwich, etc., Society*, 24 Ind. 457; *Fay* v. *Noble*, 12 Cush. 1; *Commissioners* v. *Aspinwall*, 21 How. 539; *Bissell* v. *Jeffersonville*, 24 How. 287; *Moran* v. *Commissioners*, 2 Black, 722; *Gelpke* v. *Dubuque*, 1 Wall. 175; *St. Joseph* v. *Rogers*, 16 Wall. 644; *Coloma* v. *Eaves*, 92 U. S. 202; *Commissioners* v. *Bolles*, 94 U. S. 104; *Commissioners* v. *January*, 94 U. S. 202; *Henry County* v. *Nicolay*, 95 U. S. 619; *San Antonio* v. *Mehaffy*, 96 U. S. 312; *De Voss* v. *Richmond*, 18 Gratt. 338; *Orleans* v. *Platt*, 99 U. S. 676; *County of Warren* v. *Marcy*, 97 U. S. 96."

To which we add the following cases, decided subsequently: *County of Clay* v. *Society of Savings*, 104 U. S. 579; *Insurance Co.* v. *Bruce*, 105 U. S. 328; also the following decision of the Supreme Court of Ohio in *State* v. *Commissioners*, 37 O. S. 526:

"A purchaser of such bonds, who has no actual knowledge of any defect in their execution, is not bound to look beyond the findings and record of the commissioners, for the purpose of ascertaining whether conditions precedent to their execution have been performed."

These cases clearly show where bonds have been issued in pursuance of an election, which might have been properly held; and, if so, the municipality would have been bound, that if the election was held and the bonds were issued, reciting that the election was properly held, the township will be estopped to deny the truth of that recital, as against a holder for value of such bonds having no knowledge of the contrary, and such estoppel may result from acts as well as from express words.

II.

To the point that the judgment of the Court in *Hopple* v. *Hipple*, 33 O. S. 116, is conclusive in this case, see the

opinion of DeGrey, C. J., in the Duchess of Kingston's case, 2 Sm. L. C., 6th Am. Ed. 648–49, where he says:

"From the variety of cases relative to judgments being given in evidence in civil suits, these two deductions seem to follow as generally true: first, that the judgment of a Court of concurrent jurisdiction, directly upon the point, is as a plea, a bar, or as evidence, conclusive, between the same parties, upon the same matter, directly in question in another Court; secondly, that the judgment of a Court of exclusive jurisdiction, directly upon the point, is, in like manner, conclusive upon the same matter, between the same parties, coming incidentally in question in another Court for a different purpose. But neither the judgment of a concurrent or exclusive jurisdiction is evidence of any matter which came collaterally in question, though within their jurisdiction, nor of any matter incidentally cognizable, nor of any matter to be inferred by argument from the judgment."

Counsel for defendant in error cite Freeman on Judgments, but section 158 of that book shows that the judgment in *Hopple* v. *Hipple* is no bar. That authority says that the judgment is only binding between adversary parties. In *Hopple* v. *Hipple*, Hopple and the township were not, in any sense, adversary parties. The fact that in that case Hopple and Collard might, had they chosen so to do, have filed cross-petitions against the Trustees of Brown township to enforce their bonds, does not make that case an adjudication on the point that might thus have arisen, but did not arise, on the cross-petition. See *Cromwell* v. *County of Sac.*, 94 U. S. 351. The plaintiff below, in *Hopple* v. *Hipple*, did not ask, nor did the decree make, any settlement of any issues between the co-defendants; the decree simply quieted the plaintiff's title. He only asked an adjudication that the mortgagor was not bound by these bonds, and the sole issue was as to the binding force of these bonds as against the mortgagor. *There was no issue*

of any sort between the bond holders and the township in that case, and as this action is not between the same parties, only such issues as were actually decided in that case are binding in the present case. *Cromwell* v. *County of Sac.*, supra.

The case of *Porter* v. *Wagner*, 36 O. S. 471 shows how strict the rule is, requiring the facts determined to be identical. The plaintiff in that case had, in a previous action against him by defendant, for specific performance of a contract for the sale of real estate, filed a counter claim, praying that the contract of sale might be declared rescinded, and that the money he advanced might be repaid him, on the ground that the plaintiff had agreed to rescind and to repay the sum of $1,000 prepaid on the contract. In the former action the petition and counter claim were both dismissed, yet it was held that, in the subsequent action to recover back the $1,000 deposit, treating the agreement to rescind as a complete rescission, the plaintiff was entitled to recover, and that the judgment in the previous case was not a bar.

The Court said:

"The question is not what the Court might have decided in the former action between the parties, but what the Court did, *in fact*, decide as shown by the record. . . . A judgment is conclusive by way of estoppel only as to facts, without the proof or admission of which it could not have been rendered."

In *Hopple* v. *Hipple*, the mortgagor might well have obtained the relief he got, without its being proved or admitted that the bonds were void in the hands of a *bona fide* purchaser for value. Such question was entirely outside of the controversy involved in that case, and not necessary

to a decision either canceling the mortgage or holding the bonds void.

See *Lea* v. *Lea*, 99 Mass. 493.

In short, the adjudication in *Hopple* v. *Hipple* is limited in its operation to the transaction between Hipple and the township.

The counsel for the defendant in error cited in their brief, as an authority in their favor, the case of *Corcoran* v. *Chesapeake & Ohio Canal Co.*, 94 U. S. 741. That case, as a matter of fact, is a strong decision in our favor on the question of estoppel by judgment. The decree there relied upon as an estoppel was made in a suit in which the State of Virginia had filed a bill against the Chesapeake and Ohio Canal Co. and all lien holders, to settle the priority of all liens, as well between the State of Virginia and the canal company, as between all the defendants. The decree settled the rights of all the defendants *inter sese*, so that the subsequent suit in the District of Columbia was a direct attack upon the decree of the Maryland Court, in a matter of which it had jurisdiction, and on a question which it had actually decided.

In *Hopple* v. *Hipple*, the plaintiff did not pray for the settlement of any issue between the defendants, and the Court did not attempt to settle any.

Respectfully submitted,

HOADLY, JOHNSON & COLSTON,

Attorneys for Plaintiffs in Error.

CINCINNATI, O., *October 1st*, 1883.

109-162

SUPREME COURT U. S.
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JAMES H. McKENNEY, Clerk.

Supreme Court of the United States.

NO. 36.

ANNIE LOUIS,
Plaintiff in Error,

v.

THE TRUSTEES OF BROWN TOWNSHIP, DELAWARE COUNTY, OHIO,
Defendants in Error.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF OHIO, WESTERN DIVISION.

Argument of J. S. JONES and C. H. SCRIBNER,
Attorneys for Defendants in Error.

THE B. F. WADE CO., PRINTERS, TOLEDO.

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Argument of J. S. JONES and C. H. SCRIBNER,
Attorneys for Defendants in Error.

I.

The proposition that the trustees should subscribe to the stock of the railroad company had been once voted down by the electors of Brown township. Afterwards, certain citizens of the township executed to the trustees their obligations, secured by mortgage upon

real estate, whereby they bound themselves to provide for the payment of the principal and interest, as each became due, of the bonds the township might issue in payment of its proposed subscription to the stock of the railroad company.

Thereupon a new election was held: the vote resulted in favor of the subscription; the subscription was made, and the bonds issued; but it does not appear that the township ever received any stock.

Five of these bonds, for one thousand dollars each, being the same bonds set out in causes of action numbered one to five herein, were, before maturity, indorsed to Richard Hopple. Subsequently, the township refusing to pay the interest and denying the validity of the bonds, Hopple brought his proceeding in mandamus in the Supreme Court of the State to compel the payment. All the legislation under which the bonds had been issued, and the facts and circumstances connected with their issue, were set out in the pleadings, and issue was joined upon the question of their validity. It was claimed on the part of the township, that the trustees had no *power* to issue the bonds, and that they were absolutely void. The case was submitted upon the question so presented, and it was held by the Court that the trustees had no power to issue the bonds, and that they were therefore void, as well in the hands of a bona fide purchaser as in the hands of a purchaser with notice. *Hopple* v. *Brown Township*, 13 Ohio St. 311.

This ruling was affirmed in the case of *Beckel* v. *Union Township*, 15 Ohio St. 437.

The ruling made by the Supreme Court of the State in the foregoing cases is in harmony with the decisions of this Court. Both Courts hold that where bonds issued by a municipal corporation are void for want of power to issue them, they are void in the hands of all persons.

Township of East Oakland v. *Skinner*, 94 U. S. Rep. 255, 258.

Township of South Ottawa v. *Perkins*, 94 U. S. 260.

McClure v. *Oxford*, 94 U. S. 427.

II.

The judgment of the State Supreme Court in the mandamus case was pronounced in 1862. In 1871—about nine years afterwards—the persons who had given their obligations and mortgages to the township, filed petitions in equity to have the mortgages cancelled; the basis of their proceedings being the alleged invalidity of the bonds as declared in the judgment above referred to. The township, and the bondholders, (Hopple and Collard), were made parties. The latter filed cross-petitions, insisting upon the validity of the bonds, and seeking to enforce a foreclosure of the mortgages. The Common Pleas adjudged the bonds of the township to be void for want of power to issue them, and, as a result, decreed a cancellation of the mortgages. This judgment was affirmed in the District Court of Delaware County, and afterwards in the Supreme Court Commission of the State. *Hipple* v. *Hopple*, 33 Ohio St. 116.

Unquestionably, these mortgage securities are, by

this decree, forever lost to the township; and this against the objections of the township, which, by its answer, insisted that the mortgages were valid as an indemnity to it. All parties in interest were before the Court, insisting upon their respective claims; and they are all bound by the decree rendered. This is abundantly established by the authorities.

2 Smith's L. C. 6th Amer. edit., 787–790.

6 Wait's Actions and Defences, 768, 769, 771, 779–782; 784–5.

Freeman on Judgments, Secs. 249, 253–6.

Bigelow on Estoppel, 126–7.

2 Wharton's Ev. Secs. 759, 779, 784.

Demarest v. *Day*, 32 N. Y., 281, 287, 290.

Hyatt v. *Bates*, 35 Barb., 308, 314, 316–17; affirmed in 40 N. Y., 164, 166.

Babcock v. *Camp*, 12 Ohio St. 11.

III.

It is claimed, in respect to the judgment cancelling the mortgages, that there is no estoppel as between the bondholders and the township, for the reason that they were co-defendants, and united in claiming that the mortgages were not illegal and void.

The answer shows that the township, in the proceeding referred to, set out *the facts* connected with the issue of the bonds precisely as they existed. It was upon this state of facts that the bonds were held void by the Supreme Court and the Supreme Court Com-

mission. The township denied that the mortgages were invalid. It would not have changed the legal aspect of the case, so far as the estoppel is concerned, had it insisted that the *bonds* were valid. A claim of this nature is not an averment of a fact, but is the statement of a legal conclusion, not even admitted to be true by a demurrer. *Mitchell* et al. v. *Treasurer, &c.*, 25 Ohio St. 143, 153; *Hamilton, &c. Co.*, v. *C. H. & D. R. R. Co.*, 29 Ohio St. 341, 345. The bondholders and the township united in denying the invalidity of the mortgages, or that they should be cancelled. But the Court adjudged against them. The Court found, *as against the bondholders, that the bonds were void for want of power to issue them; that they could not be enforced by either of them; and for that reason, as against both the township and the bondholders, adjudged a cancellation of the mortgages.*

How does it matter that the township, as well as the bondholders, insisted that the mortgages were valid? Upon what principle is the adjudication to bind the defendants as against the mortgagors,—the plaintiffs in the action, and not the defendants as between themselves? Suppose that the attitude of the parties upon the record had been reversed; that the township and the bondholders had united in a petition to foreclose, with a like result; namely, a judgment that the bonds were void; that for that reason there was no liability to the township upon the mortgages of indemnity, and upon cross-petitions by the mortgagors, a decree cancelling the mortgages. Would it be claimed that here was not an adjudication settling the rights of

the parties? It is in this essential particular that the case at bar differs from the cases cited by the learned counsel for plaintiff in error. The direct point in issue and upon which the judgment of the Court was had, was as to the *validity* of the bonds now sued upon by the plaintiff in error. The whole controversy turned upon that; and was determined upon issues joined in the pleadings, framed to meet the precise question as between all the parties to the suit.

The object and purpose of having all parties in interest before the Court, is to bind and conclude them by the judgment rendered. 1 Greenleaf on Evidence, §535; Bigelow on Estoppel, 1st edit. 46–7. "Nor can it be objected that the former action was between other parties, when the person making the objection was one of such parties, though in connection with other persons. The same burden is imposed on all parties intervening in a suit." 2 Wharton's Evidence, §763.

The point made by counsel upon the other side seems to be authoritatively determined against them by this Court in the case of *Corcoran* v. *Chesapeake &c. Canal Co.*, 94 U. S. Rep., 740, 744–5. We think that case identical in principle with the case at bar. In the course of the opinion the Court say, (p. 744): "It is said that Corcoran and his co-trustees, the Canal Company and the State of Maryland, *were all defendants to that suit, and that as between them no issue was raised by the pleadings on this question, and no adversary proceedings were had.* The answer is, that in Chancery suits, where parties are often made defend-

ants because they will not join as plaintiffs, who are yet necessary parties, it has long been settled that adverse interests as between co-defendants may be passed upon and decided, *and if the parties have had a hearing and an opportunity of asserting their rights, they are concluded by the decree as far as it affects rights presented to the Court and passed upon by its decree.* It is to be observed, also, that the very object of that suit was to determine the order of the distribution of the net revenues of the Canal Company, and that the Corcoran trustees were made defendants for no other purpose than that they might be bound by that decree. And, lastly, as the decree did undoubtedly dispose of that question, its conclusiveness can not now be assailed collaterally, on a question of pleading, when it is clear that the issue was fairly made and was argued by Corcoran's counsel, as is shown by the third head of their brief, made a part of this record by stipulation." And in conclusion the Court say: "It seems to us very clear that the question we are now called on to decide has been already decided by a Court of competent jurisdiction which had before it the parties to the present suit; that it was decided on an issue properly raised, to which issue both complainant and defendant here were parties, and in which the appellant here was actually heard by his own counsel; and that it therefore falls within the statutory [salutary?] rule of law which makes such a decision final and conclusive between the parties, and that none of the exceptions to that rule exist in this case."

This point is also very exhaustively considered, and

well stated, as claimed by us, in Smith's L. C. 6th Amer. edit., 821—3.

It should be borne in mind in this connection, 1st. That the bonds were adjudged void for want of power to issue them; that where bonds are void for this reason, they are void in the hands of all persons, as decided by this Court; 2d. That the demurrer admits the allegations of the answer that *all* the bonds embraced in the third defence came to the hands of the present plaintiff from Collard and Hopple *after* the judgment rendered against them, and after the maturity of the bonds. The present plaintiff, therefore, stands in the shoes of Collard and Hopple; and as they were concluded by the adjudication in the case to which they were parties, she is concluded also. 2 Smith's L. C., 6th Amer. edit., 825.

The Bailey case, cited from 14th Ohio State Reports, has no application. There the mortgage was avoided in equity for fraud, while the note was permitted to stand in the hands of an innocent purchaser. Here the mortgage was held invalid for the sole reason that the bonds were adjudged illegal and void.

IV.

That the judgment in mandamus is conclusive as to the five bonds involved in that proceeding, is established by the judgment of this Court in the case of *Block* v. *Commissioners*, 99 U. S. Rep., 686, 692--3. The present action is a bold attempt to recover upon the identical bonds which were adjudged void in a direct

proceeding brought thereon by the person from whom the present plaintiff afterwards received them.

We have not access to the statutes of Kansas, but our recollection is that a code of procedure has been adopted in that State, copied substantially from that of Ohio.

We submit in conclusion that the judgment of the Circuit Court should be affirmed.

C. H. SCRIBNER and

J. S. JONES,

Attorneys for Defendants in Error.